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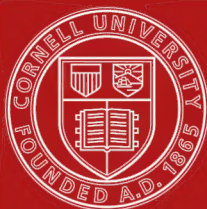
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THE FINANCE (1909-10) ACT, 1910, PART I

8810

REPORTS OF APPEALS HEARD BY REFEREES

SPECIALLY PREPARED FOR

*The Surveyors' Institution, the Auctioneers' and Estate Agents' Institute,
the Land Agents' Society, and the Central Land Association*

By A. H. F. PRETTY, BARRISTER-AT-LAW.

TOGETHER WITH

REFERENCES TO DECISIONS OF THE COURTS OF
LAW UNDER PART I. OF THAT STATUTE.

PART 1.

JANUARY, 1913.

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THE FINANCE (1909-10) ACT, 1910.

PART I.

REPORTS

OF

APPEALS HEARD BY REFEREES.

[The earlier cases, marked with an asterisk, were heard prior to the arrangement with Mr. Pretty, and were not reported by him. These Reports were obtained from various sources, and are included in order that the publication may be as complete as possible.]

Before HOWARD MARTIN, ESQ., Referee, 22nd November, 1911.

*COMMISSIONERS OF INLAND REVENUE AND EARL FITZWILLIAM.

REVERSION DUTY—VALUE OF LICENCE NOT TO BE TAKEN
INTO ACCOUNT.

A somewhat important point as to the incidence of reversion duty under the Finance Act, in the above case, was recently referred on appeal to Mr. Howard Martin, one of the panel of Referees.

The facts were that, on 6th April last, there fell in to Lord Fitzwilliam the reversion of a lease for fifty years of a plot of land upon which during the term of the lease a messuage had been erected which was afterwards licensed, and is now the Griffin Inn, Norton, Malton.

The amended provisional valuation, including the value of the licence, was accepted.

The Inland Revenue then assessed the value of the property for reversion duty, including the value of the licence; but on behalf of Lord Fitzwilliam it was contended that the value of the licence should be excluded in arriving at the total value for the purpose of assessment of reversion duty, and it was on this point the matter went to the Referee.

On behalf of Lord Fitzwilliam it was contended that under the Finance Act "land" only was assessable, and that the licence or its value did not come within the definition of "land" as used in the Finance Act, 1910, and the Interpretation Act, 1889; that it was really part of the "goodwill," and not real estate; that it was personal and might be removed by the holder to other premises or sold separately; and that nothing of such a personal character was liable for duty under this Act. It was also contended that the provision in Section 25 (4) (D) of the Finance Act—that

any part of the total value attributable to goodwill or other matter personal to the owner, occupier, &c., should be deducted from the total value to arrive at the assessable site value—was intended to prevent anyone being taxed on the value of his goodwill, &c., but not to imply that anything should be included in the total value which the phraseology of the Finance Act and Interpretation Act distinctly exclude.

The contention of the Commissioners was that, as reversion duty was assessable on the "total value," and as goodwill formed a deduction from "total value" to arrive at assessable site value (if it had been taken into account in arriving at total value), the inference was that, for the purpose of increment value duty, it would not form a deduction from "gross value" to arrive at "total value," but that "total value" practically included the value of goodwill or licence, and was therefore to be considered in the assessment of reversion duty, which differed from increment value duty, the latter being assessable only on the "assessable site value" as a basis.

The Referee has now given his decision, which is: "That the value of 'the licence to use the dwelling-house on the land in question as a public-house ought not to be included in the 'total value' of the land, and 'should not therefore be considered as an element in determining the 'value of the land for the purpose of assessing 'reversion duty.'"

Before THOMAS BINNIE, JUNR., ESQ., Referee, 8th January, 1912.

*TRUSTEES OF GEORGE HERBERT (DECEASED) AND COMMISSIONERS
OF INLAND REVENUE.

MINUS VALUES IN PROVISIONAL VALUATIONS.

An appeal as to the validity of recording *minus* assessable site values under Section 25 of the Finance Act was recently heard before one of the Scotch Referees, the appellants being the trustees of the late George Herbert. The appeal was directed against the entry in a provisional valuation of certain tenements in Glasgow, as having an assessable site value of *minus* £545. No objection was raised to the other figures in the valuation. The appellants argued that in cases where the deductions from the total value to arrive at the assessable site value exceed the total value, the assessable site value should be entered as *nil*. The Referee decided that the original site value of the land forming the subject of the appeal was *minus* £545, as contended by the Inland Revenue authorities; but the point being a legal one, he went on to say that, in the event of it being decided by a competent Court of Law that a *minus* original assessable site value was illegal under the Act, he fixed the original assessable site value of the land in question at *nil*. The Referee confessed that he could not see how the 10 per cent. allowance under Section 3 (5) was to be made in these cases, and stated that the Solicitor-General had frankly admitted this difficulty.

Before PERCIVAL TUCKETT, ESQ., *Referee*, 11th August, 1911.

*TRUSTEES OF SIR ROBERT PEEL'S SETTLED ESTATES AND
COMMISSIONERS OF INLAND REVENUE.

MINERAL RIGHTS DUTY—SURFACE RENTS.

The trustees of Sir Robert Peel's settled estates have successfully appealed against an assessment for mineral rights duty served upon them in respect of the surface rent paid to them for land used for the purposes of a colliery yard and spoil banks. The appeal was based upon the contention that mineral rights duty was confined by Section 20 of the Finance Act to a rate of 1s. in the £ "on the rental value of all rights to work "minerals and of all mineral wayleaves," and that surface rents, such as those upon which the assessment was proposed, were not covered by the words of that section any more than land used for miners' cottages, coke ovens, &c., would be. The official view, on the other hand, was that the expression "right to work minerals" covered every kind of right which might ordinarily be included in a mineral lease, and that the use of the surface for the purposes named was necessary for the working of the mine, was included in the mining lease (which is defined by Section 24), and could not be separated for assessment purposes from other payments of a similar character.

The Referee gave his award in favour of the trustees, and the Inland Revenue authorities gave notice of appeal to the High Court. This appeal, however, has not been proceeded with, and the trustees have now heard officially from the solicitor to the Inland Revenue that the claim for mineral right duty in respect of the use of portion of surface land has been abandoned.

Before SIR ALEXANDER STENNING, *Referee*, 5th February, 1912.

*T. C. HEWITT AND THE COMMISSIONERS OF INLAND REVENUE.

INCREMENT VALUE DUTY—ASCERTAINMENT OF VALUE ON OCCASION.

In this case the appellant, having purchased a leasehold house in July, 1910, for £400, resold it within a few days for £425. The official valuer acting upon the instructions to valuers, now commonly known as the "white paper instructions," claimed that the additional £25 must be attributed to an improvement in the site value, and that increment value duty was therefore payable.

The appeal was based upon the ground that no increment in the site value of the premises took place on the occasion of the sale; that alternatively, if there were any such increment in the site value, which was not admitted, it was the proportion of the net profit on the sale which

the original site value of the property bore to the total value on the occasion; and that alternatively, in calculating the duty, proper deductions were not made on the occasion in accordance with Section 2 of the Act, in respect of matters referred to in Section 25, including *inter alia* expenditure of money incurred in costs of purchase and sale and stamp duties, and for other matters personal to persons interested in the said and.

The Referee decided that there was no increment in the site value on the occasion.

Before J. G. DREW, ESQ., Referee, 5th December, 1911.

*R. C. COODE AND THE COMMISSIONERS OF INLAND REVENUE.

REVERSION DUTY—CONSIDERATION FOR LEASE.

A lease for lives was granted in 1847 on a yearly rent of 10s. 6d., a fine of £10 being paid. The property leased was a plot of ground on which the lessee had lately erected a small cottage and buildings. In June, 1910, on the death of the last life, the property fell in to the lessor.

The dispute was as to the total value at the date of the grant of the lease, Section 13 of the Finance Act.

The Commissioners converted the fine of £10 into a yearly rent on the 5 per cent. table of the expectation of a life aged twenty, the resultant of 14s. per annum was added to the rent of 10s. 6d. giving a total annual rent equivalent of £1 4s. 6d., this was then capitalised at 20 years' purchase giving a total value of £24 10s. The appellant claimed that the rent received was a merely nominal one, and that part of the consideration for granting the lease was the outlay made by the lessee. The case would seem to have depended upon whether the building done by the lessee was equivalent to a payment made in consideration of the lease, and as the answer to this question was in the negative, the Referee decided that the assessment was not illegal, that the total value had been properly calculated, and that the rent reserved was not merely a nominal one.

Before H. M. COBB, ESQ., Referee, 19th and 21st February, 1912.

*WHIDBORNE AND THE COMMISSIONERS OF INLAND REVENUE.

DEDUCTIONS UNDER SECTION 25 (4) (c).-

The above appeal had reference to differences of opinion as to the various values inserted in the provisional valuation, but a wider question was raised by a claim on the part of the appellant that a deduction should be allowed in respect of land appropriated for streets, roads, &c.

The Referee decided that an allowance in this respect should be made.

He decided that the full site value was £90 instead of £78 as given in the provisional valuation, and of this £90 he decided that £38 10s. was attributable to works executed, capital expenditure, appropriation of land for streets, roads, &c., taken together.

Before J. GOULD DREW, ESQ., Referee, 8th and 9th March, 1912.

*MRS. BUCHANAN AND THE COMMISSIONERS OF INLAND REVENUE.

INCREMENT VALUE DUTY—ASCERTAINMENT OF VALUE ON OCCASION.

In this case a house at Plymouth was sold on 29th September, 1910, by Mrs. Buchanan to the Trustees of the Devon and Cornwall Training School and Home for Nurses for £1,000. In January, 1911, a provisional valuation under the Finance Act was made, the gross value being put at £750, and the original assessable site value at £190, the sum of £560 being deducted in respect of buildings, &c.

In February, 1911, the valuation on the occasion was made, £1,000, the amount of the consideration for the transfer being taken as the total and gross value. The same deduction, £560, was made, and the balance of £440 was entered as the site value on the occasion, a claim in respect of an increase of £250 in site value being the result.

The Referee decided that there was no change in value between April, 1909, and September, 1910, and consequently that no increment value duty was payable.

Before SIR ALEXANDER STENNING, Referee, 15th March, 1912.

*STEPNEY AND BOW FOUNDATION AND THE COMMISSIONERS OF INLAND REVENUE.

REVERSION DUTY—TOTAL ORIGINAL VALUE.

In May, 1910, the lessee of Nos. 1 to 6, Coborn Street, Bow, surrendered the lease of that property in consideration of being relieved from all claims under the lease, which would not otherwise have terminated till March, 1917.

The lease was for 94½ years from September, 1822, at a rent of £24 per annum, coming into effect after the first year. It was granted in consideration of the lessee having erected six houses on the land under a building agreement. The Governors of the Foundation claimed that the total value on the surrender of the lease was £3,150, and that the total value, as measured by the consideration at the commencement of the lease, was £3,341.

The official view, however, was that the original total value was only £525, an amount arrived at by capitalising the rent reserved, and deducting the cost of copyhold enfranchisement.

The appeal was based upon the following considerations :—

- (1) That the total original values had not been properly ascertained on the basis of the rent reserved and payments made in consideration of the lease ;
- (2) That the amount expended by the lessee prior to the grant of the lease was a payment made in consideration of the said lease within the meaning of Section 13 (2) of the Finance (1909-10) Act, 1910 ; and
- (3) Alternatively, that the rent reserved by the said lease, namely, £4 per annum for each of the said six houses (Coborn Lodge not being then erected), was a nominal rent only, and that the value of the lessee's covenant or undertaking to erect the said houses contained in the agreement for the grant of the lease must be taken into account under the said Section 13 (2) of the Finance (1909-10) Act, 1910, as a payment made in consideration of the said lease.

The Referee's decision upheld the assessment of the Commissioners, being adverse to the contentions of the appellants on all three points.

Before J. McCLARE CLARKE, Esq., Referee, 9th & 10th February, 1912.

*R. J. LUMSDEN AND THE COMMISSIONERS OF INLAND REVENUE.

INCREMENT VALUE DUTY—"STATUTORY SITE VALUE."

This case is of special interest as it raises the question of the legality of the instructions issued by the Inland Revenue Department to the valuation staff for ascertaining site value on "occasions." It will be remembered that the effect of these instructions would be to enable increment value duty to be collectible in all cases where there had been either—

- (a) An increase in the value of the site as compared with the original site value ; or
- (b) The unit of valuation (or an interest therein) had actually been sold for more than it was worth at the time.

In August, 1910, a certain house and shop was sold for £750, and in February, 1911, a provisional valuation was served, putting the gross value in April, 1909, at £658, and the original assessable site value at £105, the difference between the gross value and the full site value being entered at £430. No appeal was made against this provisional valuation, which accordingly became established.

Although witnesses on both sides agreed that there had been no increase in the actual value of the site between April, 1909, and the date

of the sale, the Commissioners claimed that there had been an increase in the "statutory site value," and that increment value duty was therefore due. Their figures were : Gross value, £750 ; difference between gross value and divested value, £430, as in the provisional valuation ; deduction for works executed, £90, as in provisional valuation ; site value on the occasion, £230.

The appellants, on the other hand, claimed that this method of calculating the site value on the occasion was incorrect ; that under the Act the gross value of the land on the occasion was represented by the consideration paid ; that from the gross value as thus ascertained the full site value should be calculated in accordance with Section 25 (2) of the Act, the difference between the two providing the first deduction in arriving at the assessable site value on the occasion, under Section 25 (4).

The Referee gave his decision in the form of a Special Case, viz. :—

1. In this appeal, as questions of law are in dispute, I have been requested by both parties to state my award in the form of a Special Case for the opinion of the Court, and I accordingly find the following facts, and submit the following questions of law for the opinion of the Court :—

2. By an assessment (No. 7863, Camperdown) Robert John Lumsden (hereinafter called "the appellant") was assessed to increment value duty under Sections 1 and 2 of the Finance (1909-10) Act, 1910 (hereinafter called "the Act") in respect of a dwelling-house and shop, No. 32, Lansdowne Road, Forest Hall, Northumberland, and a gross duty of twenty-five pounds was charged in respect of an alleged gross increment value of one hundred and twenty-five pounds. Notice of appeal against the assessment was duly given by the appellant. A copy of the assessment is hereto attached, marked "Exhibit I." A copy of the notice of appeal is hereto attached, marked "Exhibit II."

3. The occasion on which the duty was alleged to become payable was a sale on August 23, 1910, by the appellant of the said dwelling-house and shop to a buyer who took possession for the purpose of carrying on the business in the shop.

4. On February 9, 1911, the said dwelling-house and shop (hereinafter called "the property") were provisionally valued under the Act as at April 30, 1909, and this valuation was accepted by the appellant raising no objection thereto within the time prescribed by the Act. A copy of the provisional valuation is hereto attached, marked "Exhibit III."

5. The consideration for the transfer on sale on the occasion giving rise to the claim was seven hundred and fifty pounds.

6. At the time of the sale the fee simple of the property, if sold in the open market by a willing seller in its then condition, free from incumbrances, and from any burden, charge, or restraint, other than rates or taxes, might have been expected to realise the sum of six hundred and twenty-five pounds.

7. At the time of the sale the value which the fee simple of the land, if sold at the time in the open market by a willing seller, might be expected to realise, if the land were divested of any buildings and of any other structures, was one hundred and five pounds.

8. It was contended before me, on behalf of the appellant—

- (a) That on the true construction of the Act the site value of the land on the occasion giving rise to the claim is represented by the price paid for the property on the sale, namely, seven hundred and fifty pounds, less the amount of the difference (six hundred and forty-five pounds) between the price paid and the value of the site (one hundred and five pounds), and, consequently, that the value of the site on the occasion within the meaning of Section 2 of the Act is the true value, namely, one hundred and five pounds, and not the value of two hundred and thirty pounds claimed in the assessment.
- (b) In the alternative, that if there was any increment within the meaning of the Act, it was attributable to some one or more of the elements mentioned in the appellant's notice of appeal.

9. It was contended before me, on behalf of the Commissioners of Inland Revenue—

- (a) That on the true construction of the Act the site value of the land for the purposes of the Act on the occasion giving rise to the claim is not the true value, namely, one hundred and five pounds, but the price paid for the property, namely, seven hundred and fifty pounds, less deductions (five hundred and twenty pounds) representing the difference between the market value at the time of the sale (six hundred and twenty-five pounds) and the site value of the land at the time of the sale (one hundred and five pounds), and that the difference between this result (two hundred and thirty pounds) and the original site value of one hundred and five pounds is the increment in the value of the land upon which duty is chargeable.
- (b) That the proper amount of deductions to be made in arriving at a site value of the land on the occasion for the purposes of the Act is the difference between the market value on the occasion (six hundred and twenty-five pounds) and the true site value of the land on the occasion (one hundred and five pounds), and not the difference between the price paid for the property (seven hundred and fifty pounds) and the value of the site (one hundred and five pounds).

10. I am of opinion, and I decide that contention (a) of the appellant is correct, and I accordingly award and decide that the appellant is not liable to pay any increment value duty on the occasion in question, and that the expenses of the appellant of and incidental to his appeal be borne and paid by the Commissioners of Inland Revenue.

11. If the Court should be of opinion that the contention of the Commissioners of Inland Revenue is correct, then I award and decide that contention (b) of the appellant was not made good, and that the appellant is liable to pay the increment value duty claimed by the Commissioners of Inland Revenue, and that the expenses of the Commissioners of Inland Revenue of and incidental to the appeal of the appellant be borne and paid by the appellant.

Before JOHN FARRER, ESQ., Referee, 31st January, 1912.

***MRS. JANE KIRBY AND MISS FANNY WALKER AND THE
COMMISSIONERS OF INLAND REVENUE.**

PROVISIONAL VALUATION.

In 1883 the father of the above ladies purchased a shop and dwelling-house at Richmond, Yorks, for £500. In May, 1910, the property passed to them on death, the value for probate being accepted by the Estate Duty Office at £500, and in the following July an agreement was entered into to sell the property to a Mr. Foster for that sum. In September, 1910, Form IV. was received, and was returned with particulars of the sale to Mr. Foster. The following March a provisional valuation was served, putting the total value at £380 and the full site value at £58 5s., figures which if accepted would have led to a claim for increment value duty.

The Referee dealt with the question as one of fact and not of principle, finding the total value of the property to be £456 15s., and the assessable site value £69 10s. He also found that the value of certain common rights attached to the property was £10.

Before THOMAS BINNIE, ESQ., Referee. 10th July, 1912.

***A B v. THE COMMISSIONERS OF INLAND REVENUE.**

INCREMENT VALUE DUTY—"STATUTORY SITE VALUE."

The following decision of Mr. Thomas Binnie, one of the Scottish Referees, has been communicated. It will be seen that the legality of the instructions issued by the Inland Revenue Department to valuers is in question, and that Mr. Binnie gives his decision in the form of a stated case.

The decision on the appeal in respect of which the annexed notice of appeal has been given is as follows :—

Having, in the presence of parties, inspected the property which forms the subject of the appeal, and having thereafter heard parties on the appeal, I find that the following facts are agreed or admitted :—

1. That C D, the husband of the appellant, died on 10th January, 1911, he being at that date possessed of the property above referred to, which is burdened with a feu-duty of five shillings.

2. That, on 6th March, 1911, the value of the property was returned for estate duty purposes by or on behalf of the appellant as *executrix* of C D at four hundred pounds, and that on 9th August, 1911, that value was accepted by the Inland Revenue district valuer on the understanding that it should form the basis of the different values under the Finance (1909-10) Act, 1910.

3. That no increment value duty was claimed by the Commissioners of Inland Revenue on the occasion of the death of the said C D.

4. That the provisional valuation as at 30th April, 1909, under the Act just cited, was served upon the appellant or her solicitors on 30th August, 1911, the details thereof being :—

| | |
|---|-----|
| | £ |
| Original gross value | 405 |
| Deductions from gross value— | |
| (a) Difference between gross value and value of the fee simple of the land divested of buildings, trees, &c.... | 380 |
| (b) Feu-duty, ground annual, or tack-duty | 5 |
| Original full site value | 25 |
| Original total value | 400 |
| Original assessable site value | 20 |

5. That no appeal was intimated against the provisional valuation which has accordingly become final.

6. That by disposition dated 3rd and 8th, and recorded 9th June, 1911, the property was sold by the appellant to E F, her brother-in-law, and his wife.

7. That the consideration payable to the appellant for the transfer was six hundred and fifty pounds.

8. That the Inland Revenue district valuer states that, when he agreed on 9th August, 1911, to accept a value of four hundred pounds as the value of the property for estate duty purposes, he was not aware that it had been transferred on 8th June, 1911, for the consideration of six hundred and fifty pounds above mentioned ; but that the transfer and the consideration therefor must have been within the knowledge of the appellant on 9th August, 1911. That the appellant states that she has no means of knowing how and when the said disposition came to the knowledge of the district valuer.

9. That no works had been executed or capital expenditure made upon the property during the period from 30th April, 1909 (the date as at which the provisional valuation was made), and 8th June, 1911 (the date of the transfer above mentioned).

10. That by an assessment dated 29th April, 1912, the site value, on the occasion of the said transfer, has been determined by the Commissioners of Inland Revenue at two hundred and seventy pounds, and that the Commissioners have accordingly fixed the increment value on the said occasion at two hundred and fifty pounds, being the amount by which the site value on the occasion exceeds the original site value fixed by the provisional valuation ; and that increment value duty has been claimed from the appellant on the said sum of two hundred and fifty pounds.

11. That by notice of appeal dated 22nd May, 1912, the solicitors for the appellant appealed against the said assessment on the following grounds :—

“ That no increment value (*sic*) is due on the occasion in question.

“ That the value of the site has not increased since the date of the
“ original valuation.

“ That no explanation of how the claim for increment value duty is
“ made up has been given.”

I am of opinion—

That at 8th June, 1911, the date of the occasion above mentioned, the fee simple of the property, if sold in the open market by a willing seller in its then condition, free from incumbrances and from any burden, charge, or restriction (other than rates or taxes), might have been expected to realise four hundred and seventy-five pounds.

That the fee simple of the land, if sold at the time under the above conditions but divested of buildings, trees, &c., might have been expected to realise seventy-five pounds; and that, subject to the burden of the feu-duty already mentioned, might have been expected to realise seventy pounds.

At the hearing before me I was requested by the solicitor for the appellant to state my decision in the form of a Special Case for the judgment of the Court on points of law advanced by him, and I accordingly do so.

It was contended before me, on behalf of the appellant—

(a) That there has been no increase in the value of the site within the meaning of Section 2 of the Act above cited between 30th April, 1909, and 8th June, 1911, and that the Commissioners of Inland Revenue having agreed to accept four hundred pounds as the basis of the different values under the Act, as stated in paragraph 2, the site value on that basis was twenty pounds at both dates.

(b) Alternatively that the consideration of six hundred and fifty pounds paid for the property by E F was greatly in excess of its value in the open market at 8th June, 1911; that in paying that price he was actuated partly by sentiment, partly by family affection towards his brother's widow, and partly by a dread that if the subjects were acquired by an outsider he might be compelled to quit the premises he had long occupied in the property, namely, his shop in which he carried on business . . . and his dwelling-house; and that on a sound construction of the Act and particularly Section 25 (4) (D), a deduction falls to be made from the consideration paid on the transfer to him in respect of goodwill or other matter personal to him as occupier of part of the property.

It was contended before me, on behalf of the Commissioners of Inland Revenue—

(a) That, in fixing the increment value on the occasion of the transfer of the property to E F, the site value, on a sound construction of Section 2 (2) (A) of the Act, must be taken to be the value of the consideration for the transfer subject to the like deduction—in this case the *same* deduction, as there had been no capital expenditure made upon the property—as was made in the provisional valuation for the purpose of arriving at the site value from the total value; and that, in arriving at the site

value on the occasion as stated in paragraph 10, the directions in Section 2 (2) (A) have been duly followed.

- (b) That, on a sound construction of Section 12 of the Act, it is not competent for the appellant, on the occasion of the said transfer, to claim any deduction for goodwill or other matter personal to E F, no such deduction having been claimed when the original value was fixed.

I decide that contention (a) of the appellant is not a question of law but is a question of fact, and I decide that the site value of the land on the occasion of the transfer on 8th June, 1911, is seventy pounds, and I find the appellant entitled to her expenses in this appeal, modified at two-thirds, and remit these to the auditor of the Court of Session for taxation.

If the Court determine that I am wrong in deciding that contention (a) of the appellant is a question of fact, and that it forms a sound contention in law, I decide that the site value of the land on the said occasion is twenty pounds, and I find the appellant entitled to her expenses in this appeal, and remit these to the said auditor for taxation.

If the Court determine that contention (b) of the appellant is correct, I decide that the site value of the land on the said occasion is seventy pounds, and I find the appellant entitled to her expenses in this appeal, modified at two-thirds, and remit these to the said auditor for taxation.

If the Court determine that either contention of the Commissioners of Inland Revenue is correct, I decide that the site value of the land on the said occasion is two hundred and seventy pounds, and I find the said Commissioners entitled to their expenses in this appeal, and remit these to the said auditor for taxation.

Before CHARLES BIDWELL, ESQ., *Referee*, 26th June and
16th July, 1912.

STEPHENS AND MERRIMAN *v.* THE COMMISSIONERS OF INLAND
REVENUE.

PROVISIONAL VALUATION—GROSS VALUE INSUFFICIENT—CON-
STRUCTION OF FINANCE (1909-10) ACT, 1910 (10 EDW. VII.,
c. 8), s. 25 (1).

In February, 1889, the appellants purchased 34 acres in Woodhall Spa, Lincs, for £4,000. In 1893 they sold 1,700 yards at 1s. 8d. per yard. In 1898 the remaining land was valued for the owners' information at £5,100. On 23rd September, 1910, the appellants contracted to sell it to Mrs. Weigall for £5,000, and the land was conveyed on 7th November, 1910. Before the conveyance Form IV. was served on the appellants. On 11th January, 1912, the provisional valuation was served, showing gross value, original total value, original site value, and assessable site

value, each £4,000. Notice of objection was given, and, on February 27th notice of appeal, on the ground that the gross value was insufficient. At the hearing evidence was called on behalf of the appellants as to the valuation and sale of the land, and by both parties as to the value of the property on April 30th, 1909.

For the appellants it was argued that the strongest fact in their favour was that there had been an actual sale for £5,000 a little more than a year after the date for valuation; a sale at a price was the best evidence of value; Section 2 (3) showed the weight given to price paid in the statute; gross value had already been the subject of judicial decision in Scotland (*Herbert's Trustees v. The Commissioners of Inland Revenue*, 1912, Session Cases, p. 952), in which case Lord Johnston did not go into details of "open market," "might be expected to realise." It was common property that the land could be bought for £6,000; the vendors were ignorant of the identity of the purchaser, and the whole effect of bringing in other purchasers would be to raise the price. If the land was worth £5,000 in 1910 it was worth considerably more in April, 1909, as the effect of the Finance Act was to check speculative building in that district. The land was valued in 1898 at £5,100, long before any suggestion of conflict, and purely for the knowledge of the owners.

For the respondents it was contended that there were two points in the case :—

(1) A question of law : On what basis ought the original gross value on April 30, 1909, to be determined? Under Section 25 (1) there were three conditions laid down : (a) "in the open market," whereas this sale was not by auction; (b) "by a willing seller"; (c) at a price which it "might be expected to realise." The words in Section 26 (2), "and any other matters which may properly be required" had a significance, as showing that one sale did not prove value; even if conditions (a) and (b) were satisfied, it had to be considered whether the price paid was a price which the land "might be expected to realise." Reference was made on general terms to the following rating cases : *Clark v. Alderbury Union* 6 Q.B.D., 139; *Hayward v. Overseers of Brinkworth*, L.T., 10 N.S., 608; and *L.C.C. v. Churchwardens of Erith*, 1893, A.C., at p. 588.

(2) A question of fact, namely, a question of valuation, and that the valuation made in 1898 was too high.

Awarded : (1) That the total value and site value fixed on the provisional valuation are insufficient.

(2) That the gross value, total value, and site value in each case is the sum of £5,000.

(3) That the expenses of the appellants be borne by the Commissioners.

For the appellants : William Allen, instructed by Rutter, Veitch & Bond, agents for Burton, Scorers & White, Lincoln. Witnesses : Capt. Weigall, M.P., Dr. Williams, Rev. John Stephens, H. Trustram Eve, F.S.I., J. E. Walter, S. V. Hotchkin, Stafford Walter, Theodore G. Chambers, F.S.I.

For the respondents : H. Kingdon, assistant solicitor to the Inland Revenue. Witnesses : C. G. Eve, F.S.I., John German, F.S.I., W. E. Woolley, F.S.I., B. Killingworth.

Before JOHN D. WALLIS, ESQ., Referee, 17th October, 1912.

EARL OF DERBY *v.* THE COMMISSIONERS OF INLAND REVENUE.

REVERSION DUTY—SURRENDER OF LEASE—EFFECT OF CONTRACT TO SURRENDER—DATE OF DETERMINATION—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., C. 8), SS. 13 (1), 15 (2).

This was an appeal against reversion duty claimed by the respondents on the determination of a lease by surrender. The facts and figures were not disputed, the sole question at issue being whether reversion duty was payable in law.

On September 24, 1886, the appellant's predecessor granted a lease for seventy-five years from March 25, 1883, of 903 yards in Oregon Street, Bootle, at an annual rent of £10 in consideration of building covenants. On February 15, 1910, Colonel C. H. Webster, the mortgagee, applied for terms of renewal for 999 years. On March, 18, 1910, the appellant offered to renew from March 25, 1910, at a ground rent of £10, and a fine of £271. The offer was in common form and contained provisions that a surrender should be executed, that the new lease should be taken up within two months of acceptance, and that the appellant might rescind by registered letter if the requirements were not complied with in two months.

On March 31, 1910, the terms were varied, the ground rent being increased to £15, and the fine reduced to £155, and on April 5, 1910, these varied terms were accepted. The fine was paid on May 20, and surrender took place on June 18, a new lease, dated June 20, 1910, being granted the same day. On September 12, the appellant sent to the respondents an account under Section 15 (2), in which the date of determination was expressed as being June 18, 1910.

For the appellant it was maintained that the offer and acceptance constituted a contract which satisfied the requirements of the Statute of Frauds and would be specifically enforced in equity at the suit of either party; where a surrender took place pursuant to a contract, specific performance of which was enforceable by the parties, a surrender of the old lease took place in law from the date of the contract to renew, whatever in fact might be the date on which surrender was effected. That this rule of equity was now the rule of law was now clearly established. (Redman's *Landlord and Tenant*, 6th Edition, p. 516; *ex parte Vitale re Young*, 47 L.T.N.S., 480; *Walsh v. Lonsdale*, 21 Ch.D., *per Jessel, M.R.*, at p. 14; Foa's *Landlord and Tenant*, 4th Edition, p. 635; *Lowther v. Heaven*, 41 Ch.D., 248.) The date of surrender set out in the account under Section 15 (2) was the date on which the surrender took place in fact, but it related back to the date of the contract; the appellant need not have rendered any account under the section, as the lease had determined before April 29, 1910. The conditions of the contract were conditions precedent to the grant of a new lease, but when once they were fulfilled the surrender related back to the date of the contract. The old lease was determined by and at the date of the acceptance of the terms of renewal, and therefore no reversion duty was payable.

For the respondents it was argued that the only point at issue was, When did the lease determine? The form of contract set out "on payment of a fine of £271," and contained, among others, the following conditions: (1) A proper deed of surrender to be executed within two months of acceptance; (3) due execution of the surrender; (6) the appellant to be at liberty to rescind if the requirements should not be complied with; (11) a proviso in case the matter for any cause should not be completed. Until the applicant had satisfied the conditions he would not be able to get specific performance; they were conditions precedent to his being entitled to a lease in equity, and on April 29, 1910, he had not complied with them. It was not till this question arose that the old lease was taken to be surrendered at the date of the contract. If the old lease was already determined, there was no need to prepare and execute a deed of surrender on June 18, 1910. The old lease did not determine till after the Act came into force.

Awarded: That the lease was determined before April 29, 1910, and that no reversion duty is payable.

For the appellant: Benjamin Arkle (Messrs. Gibbons & Arkle, Liverpool).

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before SIR ALEXANDER STENNING, *Referee*, 23rd October, 1912.

R. H. PATTERSON *v.* THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—VALUATION ON OCCASION—INCREMENT
VALUE DUTY—FINANCE (1909-10) ACT, 1910 (10 EDW. VII.,
c. 8), ss. 2, 33 (1) B.

In June, 1892, the appellant bought by private treaty certain freehold property for £455. On 9th May, 1911, he sold this property for £430. A provisional valuation as on the 30th April, 1909, was served on the appellant showing gross value £400, deductions for buildings £265, assessable site value £135. No objection was made to this valuation, and by lapse of time the original assessable site value became fixed as £135. The valuation on the occasion, based on the consideration for the sale, was, gross value £430, deductions £265, site value on occasion £165, showing increment value £30. On this £3 was claimed as increment value duty.

The appellant argued that in November, 1911, Form IV. was held by the Courts to be illegal, that the provisional valuation was based on information given by him in Form IV., and that it was the duty of the respondents in these circumstances to make a fresh valuation; that if an independent valuation was made, he had no notice of it, and was not asked to be present. Further, that there had in fact been no increase in the site value. For the respondents it was maintained that by Section 33 (1) B the appellant could appeal against the assessment of duty only, and could

not raise the question of the correctness of the original valuation, it having become fixed by lapse of time. It was pointed out to the appellant that under Section 2 (3) he was entitled to a substituted site value on the basis of the sale in 1892, but he declined to apply. In October, 1911, the appellant wrote to the district valuer saying that he did not propose objecting to the site value of £165 on the occasion. What the Courts held was that a certain Form IV. was illegal, and that only in certain particulars. The valuation in this case was not based on information supplied by the appellant in Form IV. but on an inspection by the valuer. The appellant was not entitled to exemption under Section 8 (1), as he was the owner but not the occupier of the property.

Awarded: (1) That there is increment upon which to levy duty.

(2) That the amount of increment duty payable by appellant is £3.

Appellant in person.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before DANIEL WATNEY, ESQ., *Referee*, 8th November, 1912.

DUKE OF DEVONSHIRE *v.* THE COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—SITE OF DWELLING-HOUSE—COURTYARD AS PART OF SITE—LAND “DEVELOPED BY THE ERECTION OF DWELLING-HOUSES”—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), ss. 16 (2), 17 (4)

This was an appeal against the assessment of undeveloped land duty on the courtyard in front and the land at the back of Devonshire House, Piccadilly. The notice to pay undeveloped land duty, which was served on January 2, 1912, exempted from duty the site of the actual house only and one acre, the respondents having, on January 1, 1912, written that “the courtyard cannot be considered as part of the dwelling-house.” Notice of appeal was given on January 6, 1912, the ground of appeal being “the refusal of the Commissioners to make an allowance in respect of part of the site of the house.” On October 10, 1912, an amended notice of appeal was given, on the ground that “land essential to the enjoyment of the house is developed land.”

On behalf of the appellant, plans of Devonshire House were produced and evidence was given that the two sides of the courtyard were paved, the west side being used as a stable-yard, and the east side as a tradesmen's entrance, and that the drains of the house ran under the courtyard. Witnesses were also called who said that in their opinion every building put up developed a certain amount of land with it; that in this case the courtyard gave light and access to the house, stables, and kitchens, and was essential for dealing with traffic at large receptions; that the courtyard

and the land to a depth of about 150 feet at the back were, in their opinion, developed by the erection of Devonshire House, and were necessary for the amenities of the house; that if the courtyard and the land at the back were built upon it would interfere with the user of the rooms, and would prevent the owner from obtaining as high a rent as he might do in the present condition of the land.

For the appellant it was argued that the courtyard should be considered as part of the site of the house, and should not be included in the acre exempted by Section 17 (4), as the exempted acre must be taken after the site of the house had been deducted. In Section 17 (4) "the site value of "the gardens and pleasure grounds, together with the site value of the "dwelling-house," was treated as exhaustive of the unit of taxation, and a relation was established between site value and annual value under Schedule A; for the purpose of annual value under Schedule A "courts "and yards" were included; "courts and yards" were not gardens or pleasure grounds, so they must be included in the expression "dwelling-house"; Section 8 (4) *b*, "for the purposes of this section the site of a "dwelling-house shall include any offices, courts, and yards," supported this view. By 48 George III., c. 55, Schedule B, 2, "all yards, courts, "and curtilages . . . shall be valued together with such dwelling-house" for the purpose of assessing inhabited house duty; if the contention of the appellant were wrong, undeveloped land duty and inhabited house duty would be levied concurrently on courts and yards. The appellant contended that "courts and yards" came within the definition of "dwelling-house."

In regard to every dwelling-house certain land must be held to be developed by its erection; Section 16 (2) did not confine the area of development to the land on which the foundations of the house were erected; such an intention could have been easily expressed by the words "erection of "dwelling-houses on it." It was straining the Act to confine development to the land under the house only, when land had been utilised by the erection of a house. A cottage on the site of the Bank of England would be entitled to one acre, and no more would be allowed for an expensive house built elsewhere. Undeveloped land duty could not be charged on what was essential for the use and enjoyment of a house. As to the meaning of the words "building" and "house," see Land Clauses Consolidation Act, 1845, Section 92, and the following decisions under that section: *Steele v. Midland Railway*, 1 Ch. App., 275, *per* Turner, L.J.; *Marson v. London Chatham and Dover Railway*, 6 Eq., 101; *Richards v. Swansea Improvement and Tramways Company*, 9 Ch.D., *per* Brett, L.J., at p. 434. If Devonshire House had been taken in any of these cases, the promoters must have taken the courtyard, and a part, at any rate, of the garden.

For the respondents it was contended that the only sections to be considered were Sections 16 and 17, particularly Sections 16 (2) and 17 (4). The difference between the parties was that the respondents maintained that only that land was developed which had buildings erected on or under it, whereas the appellant said that a certain amount of land which was not covered by buildings had been developed by the erection of Devonshire

House. The witnesses for the appellant did not agree as to the exact amount of land which was to be considered developed, or as to what was the test for developed land, though they all agreed that the contention of the respondents was wrong; that disagreement showed that their view was not well founded. Land was only developed when covered with buildings, otherwise it was very difficult to determine how much land was developed by each individual house. If it had been the intention of the statute to exempt land round a house, there would have been no need for Section 17 (4). The appellant also maintained that part of the land was part of the site of the house in law; the respondents did not admit that the courtyard was part of the site; the allowance of one acre under Section 17 (4) was intended to cover such land as the courtyard. If a house were in the country an exemption of five acres would probably be obtained. Section 8 (4) (b) only included courts and yards for the purposes of that section. There was not much help to be gained from authorities as to the meaning of "dwelling-house" and "site." In the Metropolis Management Act, 1878, Section 14, "site" was defined as "the whole space to be occupied by such house . . . between the level of the bottom of the foundations, and the level of the base of the walls"; "building" usually meant a structure covered by a roof (*Moir v. Williams*, 1892, 1 Q.B., 264). It was useless to look at decisions on one section of one Act only.

Awarded: That portion of the land on the north and south sides of Devonshire House, and immediately adjoining thereto and essential to the enjoyment thereof are developed land within the meaning of Part I. of the Finance Act, and are not chargeable with duty, and such portions of the land are exempted in addition to the exemption under Section 17 (4) of the Finance Act. The said portions are coloured pink on the plan annexed.

[The portions coloured pink comprise the whole of the courtyard and the grounds to a depth of 130 feet from the back of the house.]

For the appellant: William Allen, instructed by Currey & Co. Witnesses: Ulick R. Burke (agent for the appellant), Percivall Currey, John Slater, Leslie Vigers.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before HOWARD MARTIN, ESQ., *Referee*, 20th November, 1912.

WALTER ROCHE AND OTHERS v. THE COMMISSIONERS OF INLAND REVENUE.

SUBSTITUTED SITE VALUE—MORTGAGE AND SUBSEQUENT CHARGES
—CALCULATION OF VALUE OF FEE SIMPLE—FINANCE (1909-10)
ACT, 1910 (10 EDW. VII., c. 8), ss. 2 (2) B AND (3).

This was an appeal against a substituted site value assessed by the Commissioners on certain freehold property in the City of London. The

appellant Roche was the mortgagee of the property, and the other appellants were the owners of the equity of redemption. The property consisted of four houses let to different tenants. The following facts were agreed between the parties for the purposes of this appeal : (i) That there was a legal mortgage of the property on July 22, 1891, for £12,500 ; (ii) That further sums of £4,000 and £1,000 were advanced by the same parties on the security of the property on January 22, 1897, and May 25, 1899, respectively ; (iii) That all the charges were subsequently assigned to the appellant Roche. A provisional valuation was served on October 27, 1911, showing gross value £12,000, difference £5,000, full site and assessable site values, each £7,000. On December 29, 1911, the appellants applied by letter to the district surveyor for a substituted site value. On June 29, 1912, the district surveyor fixed the following values : Total value, £12,500 ; deductions, £5,200 ; substituted site value, £7,300 ; these figures being based on the first mortgage. This substituted site value was refused by the appellants on July 6, 1912, and this appeal was brought on the grounds : (i) That "in arriving at the substituted site value the further charges of £4,000 and £1,000 have not been included" ; (ii) "That the substituted site value has been arrived at by taking the amount of the original mortgage as the total value instead of estimating the value by reference to the amount secured."

At the hearing the leases and particulars of the tenancies at the dates of the different charges were produced, and evidence was given for the appellants that the property had been twice valued for mortgage purposes, in April, 1901, at £21,000 when the property and the tenants were new, and at £27,000 in 1897 when the same tenants were found to be in possession, and all were prospering.

For the appellants it was argued that the mortgage and the two further charges should be aggregated for the purpose of arriving at the substituted site value, and the value should be based on the total amount secured. The appellants claimed that the three mortgages constituted one complete charge ; they were between the same parties and would have to be redeemed together. The first mortgage was in the usual form ; it was not a mortgage of the fee simple as defined in Section 41, the property being subject to leases at the time ; the subsequent charges were supplementary to the first, both referring to it as "the principal indenture."

The form of the latter charges was a matter of convenience, they might have been made by cancelling the original mortgage, and putting the earlier and fresh loans in a new mortgage ; it was sufficient if the appellants proved that advances were made at different dates on the same property.

By the Interpretation Act, 1889, Section 1 (B) "words used in the singular shall include the plural" ; applying that in this case, the last part of Section 2 (3) would read : "This provision shall apply to mortgages of . . . any interest in land in the same manner as it applies to a transfer, with the substitution of the amount secured by the mortgages for the consideration." Nothing in Section 2 prevented the word "mortgage" being used in the plural.

A mortgage could not be a transfer on sale, it was always a mortgage.

The section allowed a substituted site value to be claimed in order to prevent a person who had purchased or taken a mortgage of the fee simple or an interest in land within the time laid down from being taxed until he had recovered what he actually paid for or lent on the property.

The appellants' second point was that, even if they could not aggregate the mortgages, they were entitled to a substituted site value based on any of the mortgages. All three mortgages were mortgages of an interest in land, and in such a case the site value was by Section 2 (2) *b* "the value of the fee simple of the land, calculated on the basis of the value of the consideration"; by Section 2 (3), in the case of a mortgage, "the amount secured by the mortgage" was substituted for "the consideration."

Supposing that in this case the appellants took the last mortgage: it would then be necessary to calculate the value of the fee simple, basing such calculation on the amount secured, namely, £1,000. This would be impossible without taking into consideration the fact that there are prior charges amounting to £16,500 on the property. Other evidence of the true value must be taken to find the value of the fee simple, and the practical way of doing it was to take the valuation of the property at the date when the mortgage was effected.

The words of a taxing statute must be strictly adhered to, and the subject must be brought clearly within them before a tax could be imposed.

For the respondents it was contended that the whole increase was put by the appellants on the site, none of it on the buildings. Section 2 (3) said "this provision shall apply to a mortgage in the same manner as it applies to a transfer"; the effect of this was to make the preceding paragraph read "site value shall be estimated by reference to the amount secured by the mortgage in the same manner as it is estimated by reference to the consideration given on a transfer where increment value duty is to be collected." In the case of a sale the transaction was complete, and though a mortgage might be for less than the value, the effect of the section was that for the purpose of substituted site value a mortgage must be considered as a sale. There could not be three transfers of the same land, as a transfer meant a transfer on sale. These were three separate and entirely distinct mortgages; the two latter, which were mortgages of the equity of redemption, were drafted as they were merely to save trouble. Each secured only the amount specified in it, and each must be considered as a transfer on sale. Applying the modifications of Section 2 (3) in the case of a mortgage to the provisions of Section 2 (2) *b*, the method of arriving at the value of the fee simple was to take the amount secured by the mortgage, and from that, and that only, make the calculation. The second paragraph of Section 2 (3) made the appellants' contention impossible. Leases would not make any difference to the value of the fee simple in possession. A mortgage could not be treated as evidence of value under this section.

Awarded: That the second and third mortgages, for £4,000 and £1,000 respectively, should be included with the original mortgage of £12,500 in arriving at the substituted site value; and that the substituted

site value should be arrived at by taking the aggregate amount of the three mortgages as the total value ; and the expenses of the appellants be borne by the Commissioners.

For the appellants : William Allen, instructed by Whatley & Son.
Witnesses : R. A. Ellis, F.S.I., A. P. Whatley.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before JOHN FARRER, ESQ., Referee, 16th November, 1912.

LEEDS FIRECLAY CO. v. THE COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—LAND USED BONA FIDE FOR A BUSINESS, TRADE, OR INDUSTRY—FINANCE (1909-10) ACT, 1910 (10 EDW. VII. c. 8), s. 16 (2).¹

This was an appeal against undeveloped land duty being assessed on four plots of freehold land, numbered 4682, 4683, 4982, and 4983, owned by the appellants. The following facts were given in evidence at the hearing :—

The appellants were owners of 240 acres of leasehold and 93 acres of freehold land ; the leasehold property was held under a lease for fifteen years from September, 1910, subject to royalties and a minimum rent, and lay partly on the north and partly on the south side of the freehold. The appellants' shafts were situated in the northern leasehold land, which adjoined a railway line. Of the freehold property, which lay between the two portions of leasehold, 78 acres were bought in 1899, and 15 acres in 1900 ; and at the date of purchase buildings had already been erected on certain portions of it. The appellants commenced working under the freehold in 1903, and in September, 1911, they were stopped on reaching the vicinity of the buildings by the fear of causing a subsidence of the surface. The average depth of the workings was about 65 yards, and the minerals could not be worked without letting down the surface. The supply of minerals in the northern leasehold land was nearly exhausted, there being only five years' minerals remaining. Of the plots the subject of this appeal, 4982 and 4983, had not been worked at any time ; plot 4682 was entered in 1907 by a narrow road driven to prove coal at a depth of about 70 yards, and had not been worked since 1907 ; plot 4683 was entered in June, 1910, and worked till September, 1911, 40 per cent. of the minerals under an area of one rood being extracted. The main road under the freehold was stopped in 1907 by reaching water, and was now used for storing water in times of flood. A new road was now being driven under the freehold, which would actually pass under plot 4,982.

For the appellants it was argued that the plots in question were developed land ; they were used *bona fide* for the business trade or industry of the appellants. The meaning of *bona fide* was explained by Cozens-Hardy, M.R., and Kennedy, L.J., in *Attorney-General v. Richmond*

(1908), 2 K.B., 741. It was impossible to let down the surface with buildings upon it, and it must be kept in its present state to be of any use to the appellants. The land was used in the manner contemplated by the Finance Act, and in five years' time it would be essential for carrying on the business. If it was established that the appellants *bona fide* used this land for the purpose of their benefit, Section 16 (4) did not apply to it. It was not necessary to use the property actively every day. This was developed land, and Section 16 (4) applied to undeveloped land.

For the respondents it was maintained that Section 16 (4) was very material, "undeveloped land does not include the minerals," so that the point at issue really was whether the surface was being "used for any "business, &c." No evidence as to such user had been given. All the plots in question, so far as the surface was concerned, were being used for agricultural purposes only; all of them were let to agricultural tenants. Of two of the plots neither the surface nor the underneath had been worked at all; as to the third, a narrow road came under it in 1907, and had not been worked since, so that during the years of assessment, not even the minerals were being worked; as to the fourth, out of 2 acres 1 rood 31 poles, 1 rood had had 40 per cent. of the minerals taken during a period of not much more than one year out of the three years of assessment. On this evidence it was impossible to say that the appellants were using this land for their trade; the surface was being used by the tenants, the appellants having parted with the possession. By Section 23 (2) "all minerals shall be "treated as a separate parcel of land."

Awarded: That the plots numbered 4682, 4683, and 4983 are undeveloped land, and that the plot numbered 4982 is not undeveloped land.

For the appellants: J. A. Freeman (Brook, Freeman & Batley, Huddersfield). Witnesses: Albert Barrett, J. E. Armitage, F. C. Crowther.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Certain of the Decisions of Referees, &c., reported or referred to in this issue are or may be under Appeal. The results of such Appeals will be reported or referred to in forthcoming issues of these Reports, but in the meantime the possibility of such decisions being reversed on Appeal should be borne in mind.

LAW CASES.

[IN THE COURT OF APPEAL.]

BURGHES v. ATTORNEY-GENERAL.

[NOVEMBER 6TH AND 17TH, 1911.]

Revenue—Taxation—Land Valuation—Form 8, Land—Finance
(1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 26, 31.

Section 31 of the Finance (1909-10) Act, 1910, is directed to enabling the Inland Revenue Commissioners to ascertain the names of persons who pay rent or who as agents for others receive rent in respect of any land. The Commissioners may in respect of any specific land require from a person who pays rent for such land the name and address of the person to whom he pays it, and from a person who as agent for another receives any rent in respect of such land the name and address of the person on whose behalf he receives such rent, but the enquiries must be in respect of a specific parcel of land. A form asking for such information in respect of unspecified land is meaningless, and makes a demand that the form should be filled up unauthorised and void.

It is not *ultra vires* on the part of the Commissioners to require returns under Section 31 to be sent to an appointed local officer instead of to themselves.

Per Farwell, L.J. . A requisition to make a return under Section 31 within less than thirty days from its receipt is not within the powers of the Commissioners, and is a nullity.

Decision of Warrington, J. (80 L. J., Ch., 506 ; [1911], 2 Ch., 139), affirmed.—(81 L. J., Ch., 105.)

[IN THE COURT OF APPEAL.]

DYSON *v.* ATTORNEY-GENERAL.]

[NOVEMBER 7TH AND 17TH, 1911.]

Revenue—Taxation—Land—Valuation—Form 4—Owner and Occupier—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 26—Rules of Supreme Court, Order XXV., Rule 5.

An action lies by the subject against the Attorney-General, as representing the Crown, claiming a declaration under Order XXV., Rule 5, to test the validity of forms issued by the Commissioners of Inland Revenue under the Finance (1909-10) Act, 1910, and it is eminently a case in which the Court ought to exercise its discretionary jurisdiction to make a declaratory order.

A notice to the owner of land to make a return under Section 26, Subsection 2, of the Finance (1909-10) Act, 1910, within less than the thirty days there specified is invalid, and imposes no obligation on the owner to do so. A notice is not invalid under Section 26, Subsection 2, merely because it requires the return to be made to an officer of the Commissioners without giving the owner an option to make it to the Commissioners.

Requisition (i.) in Form 4 requiring any person who is both owner and occupier to state "the annual value, *i.e.*, the sum for which the property "is worth to be let to a yearly tenant, the owner keeping it in repair," is unauthorised by Section 26, Subsection 2, and renders the whole form invalid.—(81 L. J., K. B., 217.)

HERBERT'S TRUSTEES *v.* COMMISSIONERS OF INLAND REVENUE.

Revenue—Increment Value Duty—Valuation—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 25—Assessable Site Value—Minus Value—Held that Assessable Site Value, in the sense of the Finance (1909-10) Act, 1910, s. 25, could not be a Minus Quantity.

Lord Johnston : This case raises a general question, of great importance in the administration of the Finance (1909-10) Act, 1910, in regard to the ascertainment of increment value for the assessment of increment value duty. That question is whether the general provisions of the Act

are consistent with a literal, or rather an algebraic, application of its twenty-fifth section, by which, in many cases, assessable site value, which is the basis for the calculation of increment value, would be found to be mathematically a *minus* quantity.

I am not surprised that Mr. Binnie, the Referee, regarding only the directions of Section 25, and holding the interpretation of an Act of Parliament to be beyond his province, considered that his only duty was to apply literally the formula of Section 25, and if that application gave a *minus* result, speaking mathematically, to set down the assessable site value at a *minus* quantity. But this Court is bound to look deeper, and to consider whether it was the real intention of the statute that this should be a possible result in any case.

It is easy to say that, in talking of value in the ordinary acceptance of that term, a thing may be shown to be worth nothing, but that it is impossible that it should be worth less than nothing. But there is such an appearance of artificiality about the Finance Act, 1910, that the above observation, though not without weight, has not the same effect as it would have in reference to a scheme of legislation which was based less on the theoretical. It is in accordance with this that the Counsel for the Crown maintained that "value" as used in the Act never, or perhaps I should say seldom (for words are not always used in the Act with the same meaning), means value as ordinarily understood, but is a mere symbol. In fact, they maintained the purely algebraic interpretation of the Act, and particularly of its twenty-fifth section, though I think they found themselves in difficulty when asked to carry this contention to its full logical conclusion.

The broad question is thus, I think, whether the statute invents and enacts a mere empirical formula, which must be applied literally or mathematically, with no relation to the object of the statute or to its subject-matter. Though, as I have said, on a surface view of the statute, and particularly of Section 25, there is some support for the affirmative of this proposition, I have come to be satisfied that when the statute is fully examined there is really no foundation for it, and that this question must be answered in the negative, in accordance both with the intention of the enactment and with ordinary business methods and acceptance of terms.

Before I proceed to consider this question, however, I think it proper to say, inasmuch as it was common ground to the parties, and by no means veiled from your lordships, that your judgment was in any event to be taken before a higher tribunal, that I had at first some difficulty in entertaining the case owing to its statement that the parties were agreed as to the items of value in the provisional valuation. Having regard to the matter in dispute, I should have expected no agreement between or concession by the parties, because it is difficult at first sight to see that agreement on the figures does not involve agreement in the result. But I was satisfied by the explanation of Mr. Clyde for the appellants, not contradicted for the Crown, that the meaning of the parties and of the case was, assuming the figures in question to be correctly arrived at in terms of the twenty-fifth section of the Act, to ask the Court to determine whether the Act required the Referee, in applying these figures, to come to the

result he did, and did not entitle and require him to come to the alternative result which he has stated. And it is on this footing that I entertain and propose to consider the case.

I have no hesitation in saying that the question at issue cannot be determined by attention confined to any one section of the statute in question, but that the scope and object of the statute and its whole provisions must be regarded. And I am all the more impressed with this, that the section to which we are asked by the Crown to confine attention, and which we are asked to apply literally, is a section providing merely the machinery for ascertaining a certain value, which is required to give effect to the provisions of the assessing clauses, and not itself an assessing clause.

The first observation, then, that occurs is, that the statute is a taxing Act, intended to raise revenue by the assessment of something, which I may describe generally as the increase of the value of an interest in land. I use the word interest advisedly, because it is not property in any ordinary sense, but a statutory interest, that is, an interest carved by the statute out of property, and hitherto unknown in practice and to the law, the increase in value of which is to be assessed. I think that this observation is true generally, though there are differences in detail between (1) increment value duty, (2) reversion duty, and (3) undeveloped land duty. Increase of value is in ordinary acceptation the increase of something actual and therefore positive, and not of something theoretical and therefore possibly mathematically negative. The statute intends to provide that the State shall have in cash a share of an increase which would otherwise go actually or potentially into the pocket of the statutory owner. The tax is made applicable to a special interest in property. And it is the increment of this special interest in property which is for the future to be the subject of this taxation. I think, having regard to the whole scope of the statute, that its plain intention was to assess something real, which on a fair interpretation of the Act could be assumed as capable of producing the tax, and not to assess an algebraic symbol of no real value, with the result of extracting the tax from funds derived from totally different sources. Though, until I examine the statute in detail, it is difficult to define the conception which is designated assessable site value, it may conduce to make my meaning more distinct if I say that I think it will be found to be the interest of the statutory "owner" in the bare land.

As the Act is so entirely evolved out of theory, it may not be inappropriate, in approaching its interpretation, to consider what that theory appears to have been and its bearing. I think it was (and I deduce this solely from a consideration of the statute itself and not from outside information) very much this, that the value of bare land, or of land divested of the results of human labour and expenditure, is increased, not by the action of the owner, but of circumstances, and that therefore the State may, without injustice, exact a share of the increase. But this postulates something which could be shared, and therefore something positive. I find it difficult to conceive of the State sharing in an increase which could only be measured by how much the value of a thing which was worth less than nothing approached more nearly to be worth some-

thing, though still worth less than nothing. And if it is maintained that this was the intention and effect of the statute, it must, I think, be established by very express enactment or irresistible implication.

I was struck with the comparison instituted by Mr. Clyde between credit and value, though I prefer to use it in my own way.

If a man's liabilities exceed his assets, he is insolvent. The value of his estate is *nil* and his credit exhausted. If the value of his assets improves, his credit, though it may not be good for much, has, eliminating the personal equation, certainly risen, yet his estate may still be worth nothing, inasmuch as an increase in value is an increase in positive value, and not an increase in the personal credit of the owner. And so it seems to me, unless we are tied up by the statutory use of symbols having an artificial and not a real meaning, that that which has no positive value is, in the estimation of the statute, worth nothing, and that until it comes to have a positive value it is still worth nothing or is of no value. As it cannot be itself assessed to derive from it a productive tax, so its theoretical approach to a positive value cannot be assessed to derive from it a productive tax.

How, then, do the provisions of the statute stand? Do they square with the practical or the theoretical—with value as a fact or value as a symbol?

Confining attention meantime to increment value duty only, the Act (Section 1) enacts that there is to be charged "on the increment value of any land a duty called increment value duty" (1) on the transfer on sale or on the grant on lease of the land, (2) on its transmission by death, and (3) on its conventional periodic transmission when it is held by a body having continuity of existence. It is unfortunate that the word "land" throughout the Act has seldom the same meaning in two consecutive paragraphs, and that the interpretation clauses (Sections 41 and 42) studiously avoid defining what it is, and content themselves with saying what it is not. I take, therefore, the word as it is found in the Act, and do not attempt to discriminate where the Act has not done so. The Act Section 2 (1), defines what is meant by "the increment value" of any land. It "shall be deemed to be the amount (if any) by which the site value of the land, on the occasion on which increment value duty is to be collected as ascertained in accordance with this section, exceeds the original site value of the land as ascertained in accordance with the general provisions" of Section 25. For convenience the site value on the occasion when increment value duty is to be exacted may be termed "occasional site value" to distinguish it from "original site value," and site value throughout the Act is (Section 25) short for assessable site value. I do not think that the definition of increment value in Section 2 (1) can be fairly read without concluding that the statute contemplates, in speaking of "exceeds," an excess of value at one point of time over value at another point of time, of an actual and practical nature, and not an excess of value of a theoretical or purely mathematical nature. And this is confirmed so far by the fact that Section 2 (2), which provides how occasional site value is to be ascertained, makes the basis of that value, in the case of actual transmission at any rate, real value, either actual con-

sideration for transfer on sale or lease, or actual valuation at death, through subjecting that real value to the same deductions as are to be made under Section 25 for the purpose of arriving at original site value.

The next inquiry is whether Section 25, which provides for the ascertainment of original site value, and affects, by reference, the ascertainment of occasional site value, compels to the conclusion that though both occasional site value and original site value may be themselves *nil*, there may yet be an assessable increase of occasional site value over original site value, by reason that the site value has approached more nearly to being worth something, though it is still worth nothing.

Turning, then, to Section 25, it is found, unfortunately, to be couched in words which conceal rather than disclose its meaning. Gross value, full site value, total value, assessable site value, in themselves convey no certain meaning. And, indeed, they may at first sight be not unreasonably regarded as mere symbols, giving colour to the contention that the section sets to the Commissioners a problem to be worked out algebraically and to an algebraical result. But when the subsections are examined more carefully it is found that gross value, full site value, total value, and even assessable site value, to the ascertainment of which the first three lead up, really mean, though they do not express, something definite and perfectly intelligible, and that a something which is always based on real or positive value as understood when ordinary language is used, as thus :—

Section 25 (1) begins with "gross value." I think this will be found to be simply hypothetical market value in the eyes of a buyer who looks on the subject as it presents itself to him, and knows nothing of its encumbrances, burdens, and restrictions. It is a hypothetical quantity, indeed, and entirely dependent on the valuer's frame of mind, for no subject ever enters the market on these terms. But it contemplates value in the ordinary acceptance of the term.

Section 25 (2) proceeds to "full site value." This is a mysterious term. But I think it is really meant to describe the present value of the bare land, still disregarding encumbrances, burdens, and restrictions. It is made of no subsequent use in itself, but only for the amount of the deduction from gross value which is required to be made in order to arrive at it. What it really is, stripped of its verbal disguise, is the present value of the site, still regarded as unencumbered, unburdened, and unrestricted, but also as divested of the result of man's labour and expenditure of capital. I do not think I go far wrong in saying that this would be popularly, and at the same time correctly and more briefly, described as the present prairie value. And I venture to accept Counsel's expression for it, divested value. That, again, must be something positive, something based on real value. For though there may be pieces of land in this country worth nothing, there is not conceivably any such worth less than nothing.

But the way full site value is got at requires to be noticed. It is defined, to read the subsection short, as gross value *minus* the difference between gross value and divested value, that is, as divested value.

But, as will be afterwards seen, it is not divested value that is afterwards wanted or used, but, though a roundabout way is taken to get at it, gross value *minus* divested value, or the proportion of the gross value of

the subject, which is attributable to man's labour and expenditure, and not to the mere present prairie value of the land. Still, both full site value, that is, divested value, and gross value *minus* full site value, that is, the added value which is the result of man's handiwork, are real values, and if they be not *nil*, as one or other or both may possibly be, must be positive values. But the section appears to me to put the cart before the horse. The valuer cannot possibly estimate directly what addition to bare site value has been made by man's exertions. The valuer must in practice first apply himself to find out, according to his own estimate, the full site or divested value, and then the difference between gross value and full site value is a mere question of subtraction.

Then comes Section 25 (3), "total value," in itself expressive of nothing, but intended to mean, though it does not describe, nothing more nor less than real market value, *i.e.*, the market value of the subject as it would go into the market at the time with its title-burdens and restrictions, but with such enhancement as man's labour and expenditure may have effected. For it is defined to be gross value as diminished by the incidence of fixed burdens and restrictions. That, again, contemplates a real tangible value. And though it may not be a positive value, it can never conceivably be less than *nil*.

For gross value, according to the definition (Section 25) (1)) is *ex hypothesi* a market value. Total value is gross value after deducting the amount by which gross value would be diminished if the subject were sold subject to fixed charges and restrictions, and is therefore real market value, as that would be found in practice. I could conceive a case in which gross value was substantial, but in which total value might be *nil*, owing to the incidence of intolerable burdens and restrictions. But I cannot conceive of total value, which is just real market value, being stated as a *minus* quantity. Market value may be *nil*, but it cannot be *minus* anything. We were reminded of a case recently before the Division of the Court in which I usually sit—that of *Stirling Crawford of Milton*. It is not reported, as the Court found that there was no proper contradictor, and that they could not *ex proprio motu* decide an important point which the papers appeared to raise. But the circumstances are useful as illustrating the matter under consideration. They may indeed at first sight be used as indicating that real market value may be a *minus* quantity. For £5,000 was paid to get rid of the property with its fixed burdens. But this is only at first sight, and was not really the position. The property was overburdened with its fixed charges, but was not thereby worth *minus* £5,000. It was simply worth *nil*, and the £5,000 was paid for release from the personal obligation which the holders had incurred for the fixed charges. But in applying this statute, and particularly Sections 2, 3, and 25, the element of personal obligation is entirely disregarded. The reference to the case, therefore, only illustrates the self-evident proposition that property in land subject to an excessive fixed charge, though it may be worth nothing, cannot *per se* be worth less than nothing. A thing is only worth what the market will give for it, and it will give nothing for a property which is overburdened. If it is worth a *minus* quantity, it must be on the hypothesis that the owner must pay something

to get rid of it. But under the Scottish system of land laws, with which alone we are concerned, a man will pay nothing to get rid of the property, though he may pay something to get rid of a personal obligation connected with the property which he has undertaken. If a property worth £1,000 is burdened with a feu-duty of £100, it is overburdened by at least £60 a year. It is therefore valueless. No one will give a sixpence for it. But unless the owner, by the form of and completion of his title, has come under a personal obligation for that feu-duty, he need not and will not pay to be rid of the property, and with it of his obligation. It is only by mixing up the real and the personal element in relation to the subject that the conception of a *minus* value can be reached. And in interpreting the statute we have nothing to do with the personal obligation resulting from contract or completed title.

The total value of land, then, as defined by the statute, or the true market value, can never be stated as a *minus* quantity, though it may sometimes be *nil*.

The provisions already considered were believed to be necessary to arrive at assessable site value, whether original or occasional.

But let me recapitulate what they really mean. (1) Gross value is nothing but the hypothetical market value of a property neither encumbered, burdened under its title, nor restricted. (2) Full site value is nothing but the present value of the bare site, unencumbered, unburdened, and unrestricted. (3) Total value is market value in its ordinary acceptance.

I think that assessable site value will also be found to be equally susceptible of a plain meaning, inconsistent with the contention maintained by the Crown.

Before approaching Section 25 (4) there are two things to note. The first and most important appears to be the use of the term "assessable" as qualifying "site value." Though site value is an artificial conception, the phrase "assessable site value" clearly indicates that the site has a value which is assessable, and that a *minus* value never can be. The assessable value may be *nil*, but if there is any virtue in the use of words it can never be a *minus* quantity. It is true that the tax is not to be laid on the assessable value simply. It is to be laid on the excess (if any) of the occasional assessable site value over the original assessable site value. If the original cannot be a *minus* quantity, still less can the occasional site value be so. For if one turns back to Section 2 (2) of the Act, it will be found that the occasional site value is to be ascertained in the same way as the original, but by substituting real values, where available, for the estimated values of Section 25. The difference between the two may be *nil*, but if neither of them can be a negative quantity the difference between them cannot be a negative quality.

Another thing is this: The Act has been drafted with reference to English law and the English system of land tenure, and it has been thought sufficient in applying it to Scotland to insert a Scottish interpretation clause (Section 42). But there is a practice in dealing with land in Scotland which, as it appears to me, considerably affects the aim of the framers of this Act in its application. Something of the same sort

may occur in England, but I know too little about the English system to venture the assertion. In Scotland in a great many feuing transactions the fixed burdens in the nature of feu-duty or ground annual are not laid on the bare land as at the time the feu is taken, nor have they any relation to the then value of that bare land. They are laid on after buildings are erected, and they bear a relation, not to the bare land as originally taken up, but to the land and buildings, a relation which is one of the arcana of the building trade, but of which it may generally be said that the feu-duty, &c., as laid on, are as much as the land and buildings will carry and yet allow the builder to get a price which will refund him his outlay in building. His profit is in the enhanced feu-duty, &c., which is a saleable asset to him. I think that this fact disturbs somewhat the result of applying the scheme of the Act to Scotland, and not improbably accounts for the Referee having on a literal application of Section 25 brought out a *minus* result. It is clear that a large half of the actual feu-duty in the present case is not secured by the site.

In considering now Section 25 (4), which defines assessable site value, I think it convenient to assume a very simple case such as the present, where the only fixed charge is a feu-duty of £52 13s. 9d., which, taken by the Referee at twenty years' purchase, gives the capital value of £1,053, as stated in the case. There appear to be no factors in relation to this property which call for the application of the many other detailed deductions which complicate Section 25 (4). But for determination of the question of principle involved in this case, the present simple instance is as good as the most complicated.

It will be found, I think, that assessable site value is really, divested of its statutory trappings, just the value of the interest in the bare land of the statutory "owner." For the statutory definition of "owner" see Sections 41 and 42. Assessable site value for the purposes of this case is defined, Section 25 (4) (a), as the total value of the land after deducting from the total value, in the first place, the same amount as is to be deducted from gross value to arrive at full site value, and after deducting, in the second place, other items which, when examined, are found to be of the same character as the items which go to make up said amount, for the deductions under Section 25 (4) (b), (c), and (d) are all, like the deduction under Section 25 (4) (a), allowances in respect of man's labour or expenditure. The deduction, Section 25 (4) (e), the parties were agreed, is in practice negligible. When in the definition of assessable site value in Section 25 (4) their real meanings are substituted for "total value" and for the amount "to be deducted from gross value to arrive at full site value," a simple result, notwithstanding the complexity and circuitry of the statutory definitions, is arrived at in the present case, and equally, I think, in every case. For original assessable site value is found to be full site value under deduction of the value of the title-burdens or the present value of the bare site, under deduction of the present value of the title-burdens, and that is, as I have said, just the value of the statutory owner's interest in the bare site. When divested of the nomenclature with which the statute has clothed it, that is really the result. If there are other deductions to be made under Section 25 (4) (b) (c) and (d), they only go

still further to reduce the assessable site value by further deducting from the full site value. But this result seems to be the key to what was the idea at the root of the statutory scheme.

That scheme recognises that the title-burdens or fixed charges, as by way of feu-duty, &c., are really an estate in the land, which belongs to someone other than the "owner" as defined by the Act (Sections 41 and 42). It aims at assessing the increment of site value in the hands of the "owner," on the assumption that you can really sever the value of land from that of buildings or improvements on it, after the land has been built upon or improved. But it firstly recognises, and consistently, that the site value in the hands of the "owner" is only so much of the value of the bare site as remains after deducting therefrom the value of the interest in the bare site of the holder of the title-burdens or fixed charges—that is, in the present case, of the superior. Accordingly, the site value is just the value of the "owner's" interest in the site. That may be *nil*, but it cannot be a *minus* quantity. It is conceived of as an assessable value. An assessable value must be a positive and not a negative value. Though the definition of site value is more complicated than that of gross value, full site value, and total value, it is seen, when bared, to represent an idea, just like those involved in gross value, full site value, and total value, which requires that the term value is used in its ordinary acceptance. Now, it may be that as here the value of the owner's interest in the site is reduced to *nil* by reason of the predominating value of the title-burdens or fixed charges. It may in time come nearer to meeting the fixed charges and yet still be *nil*. But I cannot find ground in the intention and scope of the statute for the implication that the value of the owner's interest is here to be stated not at its true value, viz., *nil*, but at the amount of the deficiency to meet the fixed charges or at a *minus* quantity.

To call such *minus* quantity an assessable value and subsequently to assess the difference between two such *minus* quantities, would not be to extract revenue from site value but from man's development of the site by his expenditure of labour and capital. This would be clean against the conception of the Act. To reach such conclusion I see no warrant for, giving to value a symbolic meaning, involving a purely mathematical conception, and for departing from its ordinary acceptance.

If anything was wanted to show that the statute never contemplated a *minus* value, it is sufficient to refer to one of the provisions for collection of increment duty (Section 3 (5)). As a relief to the owner, the increment value, as otherwise ascertained under the statute, is to abate by 10 per cent. of the original site value. Working mathematically, with *minus* values the fantastic result would be attained of an increase instead of an abatement.

I have confined attention hitherto to increment value duty, but it is not out of place to refer to the provision (Section 16) regarding undeveloped land duty—that duty is to be levied "in respect of the site value of undeveloped land" "at the rate of one halfpenny for every twenty shillings of that site value." It is not conceivable that the expression contemplates anything but a positive value. And it does not detract from this inference that, in a subsequent Section (17) (1), exemption from the duty is

provided where the site value of the land does not exceed fifty pounds per acre.

I conclude, therefore, that according to the true intent and meaning of the Act the assessable site value of the appellants' "land" in the sense of the statute is not a *minus* quantity, but *nil*, as representing its real value.

Lord Salvesen : I agree that we must sustain the appeal. I proceed mainly on the ground that the language of the statute must be construed according to the ordinary and popular meaning of the words used ; and that the word "value" cannot, according to this rule of construction, include a *minus* quantity. If the simple case be taken of a piece of ground having been feued at a rate which, when capitalised in the ordinary way, largely exceeds the market value of the land as at the date when the Act comes into operation, it would follow that if twenty years later the value of the land had increased, but still not to an extent sufficient to cover the burdens upon it, the owner of the land would escape taxation on this increment. But I cannot see that there is any injustice in this, because, during the whole period, he must have been meeting a large part of the annual burdens out of his personal estate ; and the effect of applying the provisions of the Act to his case would be to impose upon him a further charge in respect of an increment in the value of the land from which he had taken no actual benefit. The Act appears to me to be opposed to the notion of so dealing with the owner of an overburdened estate. The idea that underlies all its provisions is that an increment of value which arises not from any expenditure on the part of the owner but from the requirements or increased prosperity of the community of the district shall be shared in by the State to the extent of one-fifth ; but this proceeds on the assumption that the owner has actually or potentially put money in his pocket. Had it been intended that the word "value" should include a *minus* quantity and that the valuers appointed by the Act were to proceed as the valuator in this case has done, I think this ought to have been clearly stated ; but I cannot gather from the sections cited any intention that the word "value" as therein used was to have a mathematical or technical meaning as distinguished from its ordinary signification. On the contrary, I think it is assumed throughout that the owner of the land from whom increment value duty is to be collected on the occasion of a transfer is receiving some consideration on the transfer ; whereas if the contention of the Crown were sound he would be liable to be taxed although he was actually paying a sum to get rid of the personal obligation which he has undertaken to the previous owner.

I content myself by stating thus shortly the main ground on which I agree with the decision that your lordship has proposed ; and I think it unnecessary, in view of the exhaustive examination you have made of the general scheme of the Act, to do more than express my general concurrence in your lordship's criticisms.

Lord Cullen : By the Finance (1909-10) Act, 1910, the Commissioners of Inland Revenue are directed to "cause a valuation to be made of all "land in the United Kingdom showing separately the total value, and the "site value respectively of the land, &c."

What is meant by "total value" and by "site value" respectively is defined in the twenty-fifth section of the Act. Two other values are defined in that section, viz., "gross value" and "full site value," but neither of these falls to be shown by the Commissioners' valuation.

"Total value" may be said to represent the market value of the land as it stands, that is to say, as enhanced in value (or otherwise) by buildings or other heritable accessions to the *solum*, and burdened with any fixed charges and restrictions which may affect it.

"Full site value" is the value of the *solum per se*, regarded as divested of any buildings or other heritable accessions to it, and also as free from any encumbrances, fixed charges, or restrictions which may affect it.

"Assessable site value" is the value of the *solum*, regarded as divested of buildings or other heritable accessions, but as burdened with its fixed charges and restrictions, if any.

The "assessable site value" therefore, where there is a burden of fixed charges on the land, is not the value of the land in itself, but the value, if any, of the land as so burdened. In many cases there will be a net residual value. But in others there will be none. This may happen where the fixed charges have been laid on the land as enhanced in value by buildings erected upon it and are such as the enhanced value will carry. If the value of the enhancement is eliminated, as Section 25 directs, while the fixed charges are treated as remaining to their full amount as a burden on the divested site, it will often happen that the amount of the charges is greater than the actual value of the divested site, as in the case of a feuing stance of which the actual feuing value is, say, £100 per annum, but which in the statutory calculation of "assessable site value" falls to be viewed as burdened with a feu-duty of £150 per annum. This fixed charge, if regarded as a charge only on the divested site, could never have a greater value than that of the site carrying it. But the terms of Section 25 involve that, in the process of fixing "assessable site value," such a charge is to be taken at its value as secured on the undivested site. The estimate of "total value" is to allow for the burden of the fixed charge as so secured. And then there falls to be deducted from total value, in order to arrive at "assessable site value," any depreciation arising from a supposed divesting of the site. Thus, in the present case, the value of the feu-duty is stated at £1,053, while the value of the divested site (full site value) is stated at £508, showing a difference of £545, being the deficiency in the value of the land *per se* to meet the feu-duty so estimated.

Applying the definitions in Section 25, the valuer in the present case is put to do a sum in subtraction, the upper figure being £3,775 of total value, while the lower is £4,320, representing the statutory deductions from total value. The difference is the said sum of £545. The question is whether the intendment of the statute is that the resulting valuation shall be written down simply as *nil* or shall be written down as a *minus* quantity (—£545), being the amount by which the statutory deductions, as estimated by the valuer, exceed the total value, or to state it otherwise, the amount by which the value of the land in itself falls short of its burden of feu-duty. Either mode will show an absence of any positive value in the

"assessable site value." The latter will show how far the "assessable site value" falls short of positive value.

I am not aware of any other statutory system of land valuing for the purposes of taxation in which valuation at *minus* quantities holds place. It may be, however, that the purposes of the present statute require the use of *minus* quantities. The respondents so contend. They say that the increment value duty is imposed in respect of appreciation in the value of "any land" (Section 1); that "land" here means the land *per se*; that land overloaded with a feu-duty or other fixed charges (as estimated in terms of the statute) may appreciate in value while the assessable site value, although progressing upwards, continues to be of no positive worth; and that if, in such cases, the original assessable site value be stated simply as *nil*, the appreciation of the land *per se* will not be disclosed. This is true, assuming the respondents to be right in saying that the intendment of the statute is to tax a landowner on the appreciation of the value of his land site *per se*, whatever its burden of fixed charges whereby it may be and remain a valueless asset in his hands. The statute does not contain any definition of the word "land" as used in Section 1. It does not direct that where the total value is less than the deductions to be made from it in reaching "assessable site value" the resulting valuation is to be stated as a *minus* quantity; and while the respondents say that, mathematically, this is the necessary result of a direction to subtract a larger amount from a smaller and while the Referee agrees with them, I have not been able to satisfy myself that this view is in accordance with the intendment of the statute.

While the word "land," as used in Section 1, is not defined, this is clear, that liability for increment value duty is to be ascertained by comparing the original "assessable site value" with what may be called the "occasional site value" as ascertained at a subsequent period. Now, if the intendment of the statute were that the incidence of the increment value duty should be determined by comparing the value of the land *per se* as originally ascertained with its value *per se* as ascertained subsequently, I do not clearly see why the factor for the purposes of comparison should not have been the statutory "full site value." For that is the value of the land *per se* regarding it as divested of buildings or other heritable accessions, and as free from all incumbrances, charges, or restrictions. To illustrate this by reference to the figures in the present case—if, by appreciation in the value of the land *per se* to the extent of £100 the Referee's *minus* quantity were to rise from —£545 to —£445, the full site value, were available for purposes of comparison, which show a similar increase. As it is, however, the statutory factor for comparison is not the value of the land *per se* (full site value), but the assessable site value. This represents the position in point of value of the loaded site. The Commissioners' valuation roll is not to be a roll showing the value of the land in itself. And it is the loaded site, apparently, which has to appreciate in value before increment value duty becomes exigible. Now, if words are to be used in their ordinary sense, I do not very well see how, in the hands of the landowner who is to be taxed, the loaded site can be said to appreciate in "value" until it comes to have, at least, some positive value. Until

then any appreciation in the value of the land *per se* will accrue to the holder of the excessive feu-duty or other fixed charge by enhancing the value of his security, and, consequently, the value of the fixed charge. The site owner, *qua* site owner, will continue bankrupt. The holder of the feu-duty or other fixed charge is not, however, brought under taxation by the statute in respect of such a betterment of his property. The respondent's contention is that the owner of the site falls to pay for the betterment, which does not provide him with a valuable asset, but only goes to relieve, to some extent, his bankrupt state. This is, *a priori*, an improbable scheme of taxation, inasmuch as it involves that one man shall be taxed in respect of an increment in the value of property which, so far as any positive worth goes, accrues wholly to another. And while I am sensible that the construction of the statute under consideration is attended with much difficulty, I have been unable to extract from it this anomalous result.

I accordingly agree in the conclusion at which your lordships have arrived.—(1 S. L. T. [1912], 439.)

[KING'S BENCH DIVISION.]

BEAUFORT (DUKE) *v.* INLAND REVENUE COMMISSIONERS.

[MARCH 6TH, 1912.]

Revenue—Mineral Rights Duty—Mining Lease—“Rent paid by Working Lessee in last Working Year”—Arrears of Rent paid in Working Year—Deduction of Income Tax—Super Tax—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 20, 24, 66.

The appellant, by a lease made between him and a colliery company, demised certain veins of coal to the company for forty-two years from 1906 at a fixed yearly rent of £500, payable quarterly. On October 2nd, 1908, the appellant received from the colliery company a sum of £356 5s., representing arrears of rent for three quarters (£375) which had become due and payable in 1907, less a sum of £18 15s. which was deducted by the colliery company in respect of income tax paid by them to the Crown. Except the sum of £356 5s. the appellant received no other payment under the lease during the period commencing October 1st, 1908, and ending September 30th, 1909.

Held, that, in assessing the appellant to mineral rights duty, the sum received by him from the colliery company on October 2nd, 1908, was rent “paid by the working lessees in the last working year” in respect of the right to work the minerals, within Section 20 of the Finance (1909-10) Act, 1910, notwithstanding that it represented arrears of rent from the

previous year ; that the mineral rights duty was payable, not on the gross amount of rent for the three quarters, but only on that amount less the income tax deducted by the colliery company ; and that no deduction could be claimed from the £365 5s. in respect of super tax charged on the appellant.

Award by a Referee in the form of a Special Case for the opinion of the Court.

By an assessment, the Duke of Beaufort (hereinafter called the appellant) was assessed for mineral rights duty under Section 20 of the Finance (1909-10) Act, 1910, for the year 1909-10 upon certain mineral rights upon a rental value of £500, and duty amounting to £25 was charged thereon.

The mineral rights in question were included in a lease dated May 25th 1908, and made between the appellant of the one part and the Copper Pit Collieries, Limited, of the other part, whereby the appellant leased the veins of coal there mentioned to the colliery company for a period of forty-two years from September 29th, 1906. Clause 4 of the lease, so far as material, was as follows : "The lessees shall pay unto the Duke (a) the following clear fixed rents, viz., in respect of the first quarter of a year of the term hereby granted the rent of one peppercorn "if demanded, and in respect of each and every subsequent year of the term "hereby granted the yearly rent of £500, such yearly rent being payable "quarterly on March 25th, June 24th, September 29th, and December 25th "in every year during the said term, the first of such quarterly payments "to be made on March 25th, 1907. . . ."

On October 2nd, 1908, the appellant received from the colliery company a sum of £356 5s., but except for such sum he received no other payment under the lease during the period commencing October 1st, 1908, and ending September 30th, 1909.

Such sum of £356 5s. represented arrears of fixed rent which had become due and payable under the lease for the three quarters of a year ending September 29th, 1907. The rent reserved by the lease for such three quarters amounted to £375, but from this a sum of £18 15s. had been deducted by the colliery company in respect of income tax paid by them to the Crown.

The appellant had further, under Section 66 of the Finance (1909-10) Act, 1910, been assessed in respect of super tax at the rate of 6d. in the £ for the year beginning April 6th, 1909, and the said sums of £356 5s. and £18 15s. had been taken into account for the purpose of such assessment, and the appellant had paid in respect thereof super tax to the amount of £9 7s. 6d.

On behalf of the Commissioners it was admitted that the assessment must be reduced from £500 to £375 in any event.

On behalf of the appellant it was contended :—

- (A) That the assessment was wholly void as being an assessment upon arrears of rent due and payable prior to October 1st, 1908.

Alternatively—

- (B) That the amount deducted by the colliery company in respect of income tax ought not to be included for purposes of assessment, but that such assessment ought to be made on the amount of rent actually received by the appellant.
- (C) That the super tax received by the Crown from the appellant in respect of the premises should not be included in the amount on which the assessment was made, or alternatively that relief to the extent of the amount of such super tax should be given to the appellant.

On behalf of the Commissioners it was submitted that all the above contentions were erroneous.

The Referee decided that the contentions (A), (B), and (C) above set out were all erroneous, and his award was that the assessment was to stand at the amount agreed to by the Commissioners—namely, £375.

The questions for the Court were stated as follows :—

- (A) If in the opinion of the Court the said arrears of fixed rent ought not to have been included for purposes of assessment, then the award was to be varied by providing that the said assessment be quashed.
- (B) If in the opinion of the Court the said arrears were properly brought into assessment but the amount of income tax deducted by the colliery company ought not to have been included, then the award was to be varied by providing that the rental value mentioned in the said assessment be reduced to £356 5s. and the mineral rights duty to £17 16s. 3d., and that the assessment be amended accordingly.
- (C) If in the opinion of the Court the said arrears were properly brought into assessment but the amount of super tax above mentioned ought not to have been included, or if under the Act there was power for the Commissioners to give relief in the premises, then the award was to be varied by providing that the rental value mentioned in the assessment be reduced to £346 17s. 6d. and the mineral rights duty to £17 6s. 10½d., and that the assessment be amended accordingly.

Hamilton, J. : Mineral rights duty is charged under Section 20, Subsection 1, of the Finance (1910-10) Act, 1910, on the rental value of all rights to work minerals and of all mineral wayleaves ; and Subsection 2 provides that “ the rental value shall be taken to be (a) where the right “ to work the minerals is the subject of a mining lease, the amount of rent “ paid by the working lessee in the last working year in respect of that “ right.” The appellant is the grantor of a lease of a right to work minerals which reserves to him a rent in the following terms : “ The lessees shall “ pay unto the Duke (a) the following clear fixed rents, viz., in respect of “ the first quarter of a year of the term hereby granted the rent of one “ peppercorn if demanded, and in respect of each and every subsequent year “ of the term hereby granted the yearly rent of £500, such yearly rent

“ being payable quarterly on March 25th, June 24th, September 29th, and “ December 25th in every year during the said term, the first of such “ quarterly payments to be made on March 25th, 1907.” For the purpose of calculating the rental value reference has to be made to the last working year, and it is sufficient to say with regard to the period denoted as the last working year, that October 2nd, 1908, fell within it. On that day the appellant received from the lessees of the minerals £356 5s., representing the first three quarters of money rent payable by the colliery company in the course of the year 1907, which had been allowed to fall into arrear. When the three quarters came to be settled for on October 2nd a deduction of £18 15s. was made by the colliery company in respect of income tax paid by them upon the property in question.

The questions I have to decide are, first, whether £375 is to be brought into account for the purpose of ascertaining the rental value of the right to work the minerals, or only £356 5s., or nothing at all. I have also been asked to determine the question whether or not the amount of the super tax, which for the purpose of this case is treated as chargeable upon the appellant, ought to have been included.

The words of Section 20, Subsection 2 (a) are “ the amount of rent “ paid by the working lessee in the last working year in respect of that “ right.” I have been asked by Counsel for the appellant to treat the words “ in the last working year ” as not indicative of a period of time, or of time only, but that I ought to treat them as indicating some reference to the time in respect of which the rent in question ought, under the terms of the lease, to have been paid. In support of this contention some of the definitions of the preposition “ in ” in *Johnson's Dictionary* and the *Century Dictionary* were cited ; but it is my duty to remember that the Legislature is better able to express its meaning in plain and intelligible language than the authors quoted in the two dictionaries ; and I think I must conclude that when the Legislature said “ in the last working year ” it meant in the last working year, and not “ in respect of the last working “ year.” The next point is in reference to the words “ in respect of that “ right.” The words “ that right ” grammatically refer to the right to work the minerals which in Subsection 1 is the subject-matter of the charge. It is not the right to work the minerals in the last working year or in any year, but in respect of the right to work the minerals which is the subject of the mining lease, and I think these words refer to the rent in the lease as the consideration for the right to work the minerals. Then there is the expression “ ‘ paid ’ “ by the working lessee.” If the word “ paid ” could be read as “ payable ” the reference to the terms of the lease which the appellant's argument desiderates would, I think, be obtained, and then the amount of the rent which ought to have been paid by the lessees, and of course the time at which they ought to have paid it, would become the criterion or the measure of the rental value. But the word is “ paid,” and I think that is correlative to the word “ received ” in Clause (B). It must relate to an actual payment made under Clause (A), just as in Clause (B) the hypothesis is a receipt of rent in fact by the proprietor, serving as the measure of the rental value which in the case of a working proprietor can only be got

at in that way. I must read the word "paid" as meaning literally and actually paid. It is true that the proviso to the section speaks of rent paid by a working lessee exceeding the rent customary in the district and partly representing a return for expenditure on the part of the proprietor which would ordinarily have been borne by the lessee, and says that in such a case there is to be substituted as the rental value of the right to work the minerals such rent as the Commissioners determine would have been the rent customary in the district if the expenditure had been borne by the lessee. That does not carry the matter any further, because it is equally feasible when rent comes to be paid to discriminate between that portion of it which is equivalent to the customary rent of the district and any other portion of it which is properly applicable to a return for expenditure on the part of the proprietor of the minerals. I think, therefore, that the words of the section are too strong and clear even in a taxing Act to justify me in saying that the sum of money which was paid by the working lessees on October 2nd, 1908, is not to be part of "the amount of rent paid "by the working lessee in the last working year in respect of that right." That construction is strengthened by the fact that if the two circumstances referred to in the paragraph are both insisted upon—namely, payment in fact of something and payment in the last working year—the result would be that the revenue might lose much if not all of the benefit of the tax in cases where the rent was in fact constantly in arrear. I therefore come to the conclusion that at any rate as to £356 5s. there was such a payment by the working lessees for rent in the working year in respect of the right to work the minerals as made that an item in the calculation of the rental value.

Next comes the question as to the £18 15s. By the lease granted by the appellant the tenants were not bound to pay property tax; they were bound to pay other taxes, but not this tax. Their obligation to pay this tax arose out of the provisions of the Income Tax Act, 1842, which provides not only for their liability to pay it but for the method of recoupment by passing on the burden to their landlord; and in determining any question connected with the deduction of property tax the first thing to be looked at is the actual provision of the Income Tax Act, 1842. The specific provision applicable to this case is Rule 9 of No. 4, Schedule A, and the words are: "the tenant "paying the said assessment shall be acquitted and discharged of so "much money as if the same had actually been paid unto the person "to or for whom his rent shall have been due and payable." The words "as if the same had actually been paid" point to what is the fact, that the occupier who pays the collector does not pay the landlord. He pays that sum over because by law he is obliged to do so, and the law then gives an acquittance and discharge as if he had paid the person to whom his rent was due. But the assumption is that he has not paid the whole sum to the person to whom the rent is payable. *Denby v. Moore* and *Cumming v. Bedborough* show that the payment of the property tax is not a payment at the request of, or on behalf of, or as agent for, the person to whom the rent is due: it is a payment made because the revenue statute makes it obligatory, and it is a payment to which the statute attaches the incident,

that if the tenant is vigilant and claims this deduction the landlord is bound to allow it, because by that payment the tenant is acquitted and discharged as though he had paid, although in fact he has not paid, his rent in full. Reading the words "rent paid" in Section 20, Sub-section 2 (a), and applying them to a case which is governed by another taxing statute—namely, the Income Tax Act, 1842—I ought to read the word "paid" strictly, and to limit it to the amount which reaches the landlord. It is true that payment is not specified to be in cash, and it is true that in transactions *inter partes* founded on some voluntary act it may be said that the rent is paid when the rent is discharged, and that there may be a payment in account where little money passes, but items are set against each other. But in a case where there is no item to be set against the rent, because there is no request to pay that item, and merely a statutory right to deduct which the tenant may take advantage of or not, it cannot be said that the whole £375 is paid when in fact only a lesser sum is paid. I think, therefore, that not £375 but only £356 5s. should be brought into account, and to this extent the appeal succeeds.

There remains a further point. In 1908 no super tax was chargeable; but although that fact has been pointed out, it is not desired in this case to rely upon it, and the case is to be dealt with as if super tax had been chargeable; and the question I have to answer is whether, in addition to holding that the £18 15s. has not been paid to the appellant, I ought to hold that out of the £356 5s. some allowance should be made by reason of super tax. That would, of course, raise the further question of the amount which would have to be allowed and the mode of calculating it; but in view of the finding in the case I must confine myself to considering whether the claim to an allowance is well founded. I understand that the argument for the appellant is put thus: The mineral rights duty is a charge or impost upon the person who is entitled to rent or royalties from the working of minerals of which he is the proprietor; the Crown, upon collecting the tax from the lessee, has already received what is called its share of the profit of working these minerals, and the appellant has not, and therefore it cannot be intended that in the absence of plain words in a statute the appellant should be liable to pay tax upon some portion of the fruits of working the minerals, which has never come to him and which has never been his at all, but the Crown's *ab initio*; and that as, in ascertaining the super tax he has to pay, his whole income from all sources is taken into account, if some allowance is not made, his super tax is increased by an amount which does not really represent his share of his fruits of working the mine, but a share which has already gone to the revenue. I am unable to accept that argument. It appears to me, looking at the nature of the mineral rights duty, that those considerations do not affect the question. This is not a duty of income tax; mineral rights duty is one of a group of duties charged in respect of various forms of interest in, or advantages accruing from, real estate. They are a separate class of duties, not necessarily dependent upon profits being obtained, duties to which the machinery applicable to income tax is applied to a very small extent. They are charged on the rental value of the right to work minerals; and the rental value of the right to work minerals in this case

is to be ascertained by a method rigidly prescribed in the words of Subsection 2 (a), which seem to exclude any allowance in respect of other taxation or any payment which might be necessary to prevent the apparent overlapping of taxation. I therefore infer from the character of the duty itself that the words are sufficiently clear and precise to exclude any right to claim some diminution of the sum which was paid by the working lessees in the last working year upon the assumption that it is necessary to equalise the burden of another tax to which the appellant happens to be equally liable.

Upon the main question the appeal fails; upon the minor question it succeeds.—[81 L. J., K. B., 588.]

ANSTRUTHER'S TRUSTEES v. INLAND REVENUE.

Valuation Cases—Mineral Rights Duty—Minerals—Excepted Substances—Felsite—Whinstone—Granite—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 20 (1) and (5).

The Finance (1909-10) Act, 1910, Section 20 (1), imposes a duty "on the rental value of all rights to work minerals and of all mineral way-leaves," and enacts by Subsection (5): "Mineral rights duty shall not be charged in respect of common clay, common brick clay, common brick earth, or sand, chalk, limestone, or gravel." Section 22, which deals with special provisions as to increment value duty and reversion duty in the case of minerals worked or leased, enacts, Subsection 8: "Nothing in this section shall apply to minerals which are exempt from mineral rights duty under this Act." Section 24, the interpretation clause, does not define "minerals," but contains the following clause: "Where any minerals are at any time being worked by means of any colliery, mine, quarry, or open working, all the minerals which belong to the same proprietor, if minerals are being worked by the proprietor, or which the lessee has power to work if the minerals are being worked by a lessee, and which would in the ordinary course of events be worked by the same colliery, mine, quarry, or open working, shall be deemed to be minerals which are being worked at that date."

Held, that felsite, whinstone, and granite were subject to mineral rights duty.—(49 S. L. R., 843).

[CHANCERY DIVISION.]

Re SMITH-BOSANQUET'S SETTLED ESTATES.

[MAY 8TH, 1912.]

Revenue—Reversion Duty—Increment Value Duty—Provisional Valuation—Costs of Checking Valuation—Rights of Remaindermen—Duty of Trustees—Duty of Tenant for Life—Finance (1909-10) Act (10 Edw. VII., c. 8), ss. 1, 26, 27, 39 (1).

The Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8) imposes no duty on trustees of settled land to check the provisional valuations of the land which have been made by the Commissioners for the purposes of duty and served upon the trustees as "owners" in accordance with the Act; and the Court will not order the trustees to incur this expense, but in particular cases, such as the case of a building estate, the Court will give the trustees liberty to take such steps as may be advisable and reasonable to test the valuations made under the Act.

Semble: Increment value duty and reversion duty chargeable under the Act are payable out of capital.—(107 L. T. R., 191.)

[IN THE COURT OF APPEAL.]

In re KNOLLYS' TRUSTS.—SAUNDERS *v.* HASLAM.

[JUNE 22ND, 1912.]

Revenue—Land Values—Provisional Valuation—Settled Land—Duty of Trustees to check Valuations—Remaindermen—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 26, 27, 39, 41.

A person equitably entitled in remainder to certain land let upon long leases, the first of which would expire in 1977, applied to the Court that the trustees of the settlement should be directed to take the necessary steps for checking the provisional valuations of the settled land made by the Inland Revenue Commissioners under Section 26 of the Finance (1909-10) Act, 1910. The tenant for life objected to this expense being

incurred, and the trustees stated that in their discretion they considered it unnecessary.

Held, that as the trustees in their discretion did not think it necessary to check the provisional valuations the Court would not interfere with their discretion.

Per Cozens-Hardy, M.R.: There may be cases which would justify trustees in incurring expenditure in checking valuations under the Act either after obtaining or without the direction of the Court.

Decision of Neville, J., affirmed.—(81 L. J., Ch., 572.)

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THE FINANCE (1909-10) ACT, 1910, PART I.

REPORTS OF APPEALS HEARD BY REFEREES

SPECIALLY PREPARED FOR

*The Surveyors' Institution, the Auctioneers' and Estate Agents' Institute,
the Land Agents' Society, and the Central Land Association*

BY

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TOGETHER WITH

REFERENCES TO DECISIONS OF THE COURTS OF
LAW UNDER PART I. OF THAT STATUTE.

PART 2.

MAY, 1913.

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THE FINANCE (1909-10) ACT, 1910.

PART I.

REPORTS
OF
APPEALS HEARD BY REFEREES.

Before D. H. MACNICOLL, ESQ., Referee, January, 1913.

J. B. LITLEDALE *v.* THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—NOTICE OF OBJECTION—INSUFFICIENT
STATEMENT OF “AMENDMENTS DESIRED”—FINANCE (1909-10)
ACT, 1910 (10 EDW. VII., c. 8), s. 27 (2).

This was an appeal against provisional valuation. A preliminary point was taken on behalf of the respondents that the appeal could not be heard, on the ground that the notice of objection did not set out with sufficient clearness what amendments were claimed by the appellant. The amendments claimed in the notice were that the true values of the property on April 30, 1909, be inserted in place of the values set out in the provisional valuation.

The Referee upheld the respondents' contention, and decided that the notice of objection was insufficient.

For the appellant: Benjamin Arkle (Messrs. Gibbons & Arkle, Liverpool).

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before HOWARD MARTIN, ESQ., Referee, 13th January, 1913.

GEORGE JACKMAN & SON *v.* THE COMMISSIONERS OF INLAND
REVENUE.

UNDEVELOPED LAND DUTY—NURSERY GROUNDS—LAND DEVELOPED
BY THE ERECTION OF GLASSHOUSES OR GREENHOUSES—FINANCE
(1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 16.

This was an appeal against an assessment of undeveloped land duty. The appellants were nurserymen carrying on business at Woking, the

principal part of their business consisting in the growing of hardy and half-hardy trees and shrubs in greenhouses. The area occupied by the greenhouses in question was 1a. Or. 25p. It was conceded by the Commissioners that in addition to the actual site of the greenhouses a certain quantity of the land surrounding them, which was used for approaches, &c., was to be regarded as having been developed by the erection of the greenhouses, and an allowance was made for this purpose of an amount of land equal to the area of the greenhouses, viz., 1a. Or. 25p.

Section 16 of the Finance Act, which relates to undeveloped land duty, provides by Subsection (2) that for the purposes of Part I. of the Act land shall be deemed to be undeveloped land if it has not been developed by the erection of dwelling-houses or of buildings for the purposes of any business, trade, or industry other than agriculture (but including glasshouses or greenhouses), or is not otherwise used *bonâ fide* for any business, trade, or industry other than agriculture. The expression "agriculture" is defined by Section 41 as including the use of land for (*inter alia*) nursery grounds. Land used for this purpose is therefore to be treated as undeveloped land except in so far as it has been developed by the erection of glasshouses or greenhouses.

The only question in dispute on the appeal was the amount of land which was to be regarded as having been developed by the erection of the appellants' greenhouses.

On behalf of the appellants it was contended that, in addition to the allowance made by the Commissioners, the land required for planting out the shrubs grown in the greenhouses was to be regarded as having been developed by the erection of the greenhouses. On this point evidence was given by Mr. Arthur George Jackman that half-hardy plants required to be planted out for two or three years, or in some cases even longer before they became saleable, and that for this purpose 8 acres of land were required in addition to the land which was treated as developed land by the Commissioners.

This evidence was not disputed by the Commissioners, but it was contended on their behalf that only so much land as was absolutely necessary for the use of the greenhouses was developed land, and that the whole of the land required for planting out the shrubs, though used for the purposes of the appellant's business, was used for agricultural purposes and was undeveloped land within the meaning of the Act. Reference was made to *Smith v. Richmond* (1899), A. C., 448, decided under the Agricultural Rates Act, 1896.

Awarded: That the area of land allowed by the Commissioners as developed by the glasshouses is sufficient.

For the appellants: William Allen, instructed by Rutter, Veitch & Bond.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before DANIEL WATNEY, Esq., Referee, 23rd January, 1913.

ST. JOHN'S COLLEGE, OXFORD, v. THE COMMISSIONERS OF INLAND REVENUE.

REVERSION DUTY—SURRENDER OF LEASE—TOTAL VALUE AT DATE OF GRANT OF LEASE—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 13.

Mr. Danckwerts said that this was an appeal against reversion duty being charged on the determination of a lease of 12, 13, and 14, Beaumont Street, Oxford, of which property the appellants were the freeholders. It had been for centuries the practice of the Colleges to grant leases for forty years, which was the maximum period possible for them; at the end of the first fourteen years the lease was surrendered, and a new lease for forty years was granted at the same rent, in consideration of the surrender and of a fine.

In this case a lease of the premises was granted on December 8th, 1896, for forty years from October 10th, 1896, at a rent of two guineas, in consideration of the surrender of a current lease granted from October, 1882, and of a fine of £95 8s. The first fourteen years expired in 1910. Then the same process was gone through; the lease of 1896 was surrendered, and a new lease for forty years was granted in consideration of the surrender at a similar rent and a similar fine. It was agreed that the total value on determination in 1910 was £734, and that the proper way of calculating the fine was on the 6 per cent. tables. The bursar would say that in 1896 and 1910 the fine was calculated on the 6 per cent. tables, and that the fine was 2·043 of the annual value. In granting the new lease it was assumed that the annual value was the same at the beginning of the lease and at the end of the twenty-six years.

In 1896 the annual value of Nos. 12 and 13 was £18 each, and of No. 14 £19, making a total annual value of £55. From that was deducted £2 2s. rent and 10 per cent., £5 4s., for repairs—£7 6s. in all. This left an excess of annual value over rent of £47 14s., and the fine was calculated at two years' purchase of this—viz., £95 8s. The total value at the grant of the lease in 1896 must be calculated on the basis of the rent reserved and payments made in consideration of the lease, that is, it must be taken that the rent reserved was £2 2s., and that the fine of £95 8s. was paid, as being two years' purchase of the improved value. The addition of £2 2s. to the improved rental value gave £49 16s. as the net annual rental value of the premises, and the appellants asked that this should be capitalised on the 5 per cent. scale, which gave £996 as the total value of the freehold in 1896. Comparing this with £734, the agreed total value at the determination, it was clear that there was no surplus and therefore no benefit to the landlord.

Under Section 13 (2) there must be deducted from the £734 the compensation payable at the end of the lease which would practically be fifteen years' purchase of the improved rental value, £47 14s., i.e.,

£715 10s., less the fine £95 8s., making £620 2s. This left £114 as the total value in 1910 as calculated under Section 13 (2). The appellants' claim was supported by the decision of Horridge, J., in *Marquis of Anglesey v. The Commissioners of Inland Revenue* (1913), 1 K. B., 356.* Unless the total value in 1896 was less than £114 no reversion duty was payable, and the Commissioners' own assessment as at that date made it £168 13s.

Rev. Henry Jardine Bidder, bursar of St. John's College since 1896, gave evidence bearing out counsel's statements as to the custom of leasing. He arranged the leases of 1896 and 1910. The college could not grant reversionary leases or leases for more than forty years, except in the case of building leases. He produced the calculations he had made in 1896; the fine was two years' purchase of the improved value of the fourteen years less ground rent and 10 per cent. for repairs. The surrender was, in fact, part of the consideration for the grant of the new lease. The fine in 1910 was the same as in 1896 and was calculated in precisely the same way; it was two years' purchase of the total net annual value less £2 2s.

Cross-examined: In 1896 there was no contract preceding the lease; in his opinion the values in 1896 and 1910 were the same. Leaving out the surrender, the consideration in 1910 was £95 8s. and a rent of £2 2s. The fine was a price for exchanging a twenty-six years for a forty-years lease, it was a price of a fourteen-years lease deferred twenty-six years.

Mr. Kingdon, for the respondents, admitted that the Commissioners could not resist the appellants' contentions at present in face of the decision in the *Marquis of Anglesey's* case. The respondents had worked out the value at the beginning at £168 13s.; if that were right, and if £114 were the value at the end, they could not contend that reversion duty was payable. The position taken up by the Commissioners as to finding the total value at the time of grant was as follows: There was a rent of £2 2s.; of that they had given thirty years' purchase, making £63; to that they added £95 8s., making the total value of the term £158 8s. It was not necessary to decapitalise the fine except to find the difference between the value of the term and the value of the fee. The surrender was part of the consideration, but a part which must not be taken into account under the terms of the Act in finding the total value. For the fine and the rent the man who paid them had the right to hold the land for forty years.

The present value of £1 payable in perpetuity was 16·6; the present value of £1 payable for forty years was 15·0463. If therefore £158 8s. was the value of the term and if the relation of the fee to the term was that of 16·6 to 15·0463, how could the total value be anything like £996. Horridge, J., in *Ramsden v. The Commissioners of Inland Revenue* had said that in his opinion the word "payments" meant payments in the narrow and ordinary sense of the word.

Awarded: That no benefit has accrued to the lessor by reason of the

* This decision was reversed by the Court of Appeal, April 30th, 1913.

termination of the lease, and that the grant of the new lease must be taken as compensation payable by the lessor.

For the appellants: Danckwerts, K.C., and J. E. Harman, instructed by Fladgate & Co., agents for Morrell & Son, Oxford.

For the respondents: F. W. Kingdon, assistant solicitor to the Inland Revenue.

Before HOWARD MARTIN, ESQ., Referee, 28th January, 1913.

HAYLLAR AND OTHERS *v.* THE COMMISSIONERS OF INLAND
REVENUE.

SUBSTITUTED SITE VALUE—MORTGAGE—FINANCE (1909-10) ACT,
1910 (10 EDW. VII., c. 8) s. 2

Mr. Allen said that this was an appeal against the refusal of the Commissioners to grant a substituted site value in respect of two freehold houses, 62 and 64, Tisbury Road, Brighton. Provisional valuations, which were agreed to be correct, were served on March 29, 1912, showing gross and total values, £800, and full site and assessable site values, £190, on each of the two properties. It was admitted by the Commissioners: (1) that on December 22, 1898, there had been a mortgage of the two houses for £1,600; (2) that the mortgagees were trustees, and that the loan was advanced out of trust moneys; (3) that any claim to substituted site value which could be based on the mortgage would enure to the benefit of the appellants. The valuer who had valued the property for the purpose of the mortgage was away in British Columbia, and therefore could not be called, but evidence would be given that at the date of the mortgage the total value of each house was £1,200 and the site value £273. If those values were correct, then, if the Commissioners pursued their customary method of valuation on an occasion, they would deduct £273 from £1,200, leaving £927 to be deducted from £800, with the result that the substituted site value on each house would be *minus* £127. This meant that in the case of every mortgage where only two-thirds of the value of the property had been advanced, unless the property had fallen in value by more than one-third, there would be no gain from a substituted site value based on the mortgage if the contention of the Commissioners was correct. That was contrary to the intention of the statute, which meant to protect people from increment duty until the property had reached the value it had when the money was lent. What was mortgaged in this case was not the fee simple but an interest in land, one of the houses being let at the time, so that Section 2 (2) (b) applied, which then read "calculated on the basis of the amount secured by the mortgage." To arrive at the value of the fee evidence could be received as to what the actual value of the land was, and what proportion of that amount was secured by the mortgage. If from that value the "like deductions" were made, the result would be an increase in the substituted site value above the site value

shown in the provisional valuation. It was agreed between the parties that the decision should be given in the form of a case stated, and he asked the Referee to find as facts (1) those facts which had been admitted by the respondents, and (2) that at the date of the mortgage the total value of each house was £1,200 and the site value £273.

Frederick Cecil Parsons said he had practised as an estate agent and valuer in Brighton for thirty-nine years. He had inspected the two houses, and estimated their rental value in 1898 at £70 each. That he capitalised at seventeen years' purchase, giving a total value of £1,190 for each house. The site value of each house he estimated at £273, viz., 21 feet frontage at £13 per foot. The depth of the property was 105 feet. The property market in Brighton was never better than in 1898. He thought the provisional valuations were quite fair, the difference in the values being entirely due to depreciation of the property.

Cross-examined : There had been a very heavy fall in site values in Brighton. In this case it was a third of the original figure. At the passing of the Finance Act, 1910, speculative building was practically dead.

Mr. Shaw, for the respondents, said that the point was the construction of Section 2. The effect of Section 2 (3) was that substituted site value might be claimed as if the mortgage had been a transfer on sale, and the amount secured by the mortgage had to be substituted for the consideration on a transfer. In this case the amount secured was £800 for each house. The appellant contended that the words "calculated on the basis of" enabled him to introduce evidence of the value outside the amount secured by the mortgage, but in *Ramsden v. The Commissioners of Inland Revenue*, Horridge, J., had said that in his view Section 13 (2), in using the words "to be ascertained on the basis of the rent reserved," was compulsory, and that it was not competent for the appellant to call valuers, but the rent and the rent only must be regarded. The words in Section 13 (2) were equivalent to the words in Section 2 (2) (b), and in this case the Referee was not entitled to go into evidence of what the value had been, but he must look only at the amount secured, which would result in a substituted site value of no value to the appellant. The words in Section 13 (2) were so precisely similar as practically to conclude the matter.

Mr. Allen, in reply, said that he agreed that total value under Section 13 (2) had to be ascertained on the basis of rent reserved, but a number of other payments were taken into account, and Section 13 dealt only with reversion duty. Sections 2 (2) (b), 13 (2), and 32 were not mutually dependent on one another. If the respondents' contention were right, a site value of many thousands of pounds might be arrived at on a property which was worth very little.

Awarded : That the substituted site value should be the amount secured by the mortgage and not the value of the property at the time the mortgage was granted.

For the appellants : William Allen, instructed by Frank H. Hayllar.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before CHARLES BIDWELL, ESQ., Referee, February 5th and 6th, 1913.

THOMAS WAITE *v.* THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—AGRICULTURAL LAND—TOTAL VALUE—
SITE VALUE DEDUCTIONS—SEA WALLS—BUILDINGS—STRUCTURES APPURTENANT TO OR USED IN CONNECTION WITH BUILDINGS—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., C. 8), s. 25.

This was an appeal against the provisional valuation of the Toft House Farm, Wrangle, Lincs, of which the appellant was the owner. The land was protected against the incursions of the sea by two sea banks, and one of the questions of the appeal was whether these sea banks were to be considered as divested for the purpose of arriving at the full site value. It was agreed between the parties that £15 was the difference between the gross and total values due to the existence of a bridle path right of way.

Mr. Allen, opening for the appellant, said that the appeal involved law and fact, and was a test case on agricultural valuations. The appellant wished for an interpretation of the law, as it was not safe to settle provisional valuations until there was a definite pronouncement of the Courts. The area of the farm was 153a., 3r., 13p., made up of 98 acres arable, 41 pasture, and 14 marsh; and the farm was let at £280 per annum, the tenant repairing buildings and the landlord the sea banks, and paying an annual land tax of £5. A provisional valuation was served on January 24, 1912, showing gross and total values £6,300, and full site value £5,750. Notice of objection was put in claiming a total value of £6,110. On June 3, 1912, an amended provisional valuation was served, showing gross value £6,015, total value £6,000, full site value £5,365, assessable site value £5,350. A further notice of objection was given on August 1, claiming that on April 30, 1909, the total value was less than that set out in the provisional valuation, and that the difference between gross value and full site value exceeded £650. The question of the difference was the main issue in the appeal, but there was a further issue that no deductions had been allowed for works executed and expenditure of a capital nature. As to the total value that was purely a question of fact, and the appellant asked that it should be reduced. As to the difference, if the land were stripped, under Section 25 (2), of the house, timber, and fences, it would be much greater than £650; but the appellant went further and asked that everything should be taken off which had been put there by man, including the sea walls. If that were done the land would be practically under water. There were on the farm 14 acres of outmarsh which were worth £2 per acre; and if the sea walls were taken away the whole farm would be reduced to that condition.

William Allen, the tenant of the farm, said that he generally wintered 52 to 54 cattle on it, and kept 100 ewes. The spring tides often splashed over the wall, and the water ran away through self-acting doors. In 1883. the tide broke the outer bank and did damage which lasted three years.

The north wind sent the sea up against the bank. He had about 100 acres of salt marsh, for which he paid £10 per annum. Witness would give £40 an acre for Toft House Farm, for the land inside the bank, but the farm would be no use if the banks were away, and he would not then buy it at any price.

Charles L. Hall, agent for Mr. Waite, produced a plan and schedule of the property. He put the total value on April 30, 1909, at £5,628, and the gross value at £15 more; the full site value, divested of everything, at £356 for the 154 acres. If the sea banks were taken away, 138 acres would be liable to be covered by the ordinary spring tides; the remaining 16 acres would be liable to flood at exceptionally high tides. With the highest recorded tide all except three-quarters of an acre would be under water.

Alternatively, valuing the land with the house, trees, and live fences only gone, the full site value was £3,500. He did not think anyone would give £6,000 for it as it stood. Its market value on April 30, 1909, was £5,628, viz., £40 per acre for the enclosed land, £2 per acre for 14 acres outside. The outer bank had increased the value of the land between the banks for purposes other than agriculture; it would be possible to erect buildings there, though not on the outer marsh. If it had not been for the bank it would not have been possible to build the coastguard station.

Cross-examined: On April 30, 1909, the land was let at £280, which was its fair annual rental. From that must be deducted land tax £5, insurance £1 0s. 6d., repairs at $12\frac{1}{2}$ per cent. £35, repairs to sea walls (ordinary and extraordinary) £14, leaving £224 19s. 6d. as the net annual value. The farm was a good average one. Witness did not think that the market price on April 30, 1909, was twenty-five years' purchase. The Roman wall extended for fifty miles; the other wall was not so important as the Roman wall. He did not think the coast had accreted at all during the last thirty years. He had not added anything to the valuation as value for building purposes, nor had he made a field-to-field valuation. He thought the values in 1903 and 1909 were about the same, but the part bought in 1903 was the most valuable part of the farm, as it fronted a road. He had known the farm for thirty years.

H. Trustring Eve said he knew the values in the district. He put the total value at £5,508, viz., 14 acres at £2, 140 at £40, less land tax £120. Before the rains of August, 1912, he thought the farm would make £500 or £600 more than in April, 1909. His estimate of full site value naturally varied according to what had to be divested, and whether or not the neighbourhood must be assumed to be divested simultaneously. On the basis of the buildings, house, trees and hedges divested, and surrounding things in their present condition it was £3,528 viz., 140 acres at £25, and 14 acres of saltmarsh at £2. If the neighbourhood was divested simultaneously it was £2,128, viz., 140 acres at £15, and 14 acres at £2. If the sea walls also were taken off, and the surroundings were in their present condition, he estimated the full site value at £356, viz., 138 acres at £2, and 16 acres at £5. With the sea walls away and the neighbourhood divested the full site value would be *nil*, it would be absolutely unsaleable. A rough estimate of rebuilding the house was £1,400. He

did not think the farm could be run with less appliance. The outer wall had made the land between the walls building land within the Act.

Cross-examined : The value of land in the district had increased between 1903 and 1909 owing to the potato boom. The rent was a full reasonable rent, a rack-rent. In this case the rent and the annual value were the same. The land was worth twenty years' purchase of the net annual value.

Benjamin Simons said he farmed 1,000 acres in East Lincolnshire, was a commissioner of sewers, and had bought and sold land in the district. The situation of the farm was not good, being seven miles from the nearest station. He estimated the values on April 30, 1909, at gross value £5,628, total value £5,463. It was worth from £3 to £5 per acre more now. He had considered the possibility of a breach in the sea wall, and thought the danger was appreciable. He did not think the land on April 30, 1909, would have fetched £6,000. The value with the house, buildings, trees, and live fences removed was £3,758, viz., outmarsh £2 per acre, and the rest £26 10s. per acre. The equipment was suitable for the farm, not too much. £10 per acre was necessary to equip a holding of this size. The value with the banks and everything else divested was £436, viz., 138 acres at £2, and 16 acres at £10. The value attributable to the outer bank was the difference between £2 and £40 per acre. It would not pay to put up the sea walls afresh to reclaim the land.

Cross-examined : He had been over the farm. It was his own valuation altogether, and he had not seen the last witness before making it. He knew the rent, and valued at 21 years' purchase of the rental ; he would probably have taken twenty-two and a half years' purchase but for the danger of a breach of the sea wall. He allowed £8 per annum for repairs of bank. His deductions from the rent came to £24 0s. 6d., leaving a net rental of £256 19s. 6d. He had assumed both sea banks gone, and no sea defence on this farm only.

Re-examined : In 1883 the water flowed over the bank. There was a distinct difference in the number of years' purchase between the value of an inland farm and a farm protected by a sea bank.

Edward Ash Young said the value of land in East Lincolnshire had advanced since April, 1909. He estimated the total value of the farm at £5,463, his deductions being thirty years' purchase of the land tax and £15 for the bridle-path. The full site value, with the house, buildings, trees, and live fences divested, was £3,750. To re-equip the farm would cost £1,400, £10 per acre. The live fences would cost £3 a chain to replace. The value attributable to the sea banks was the difference between £2 and £40 per acre.

Cross-examined : He knew the rent, and took twenty-one years' purchase of the net rent. His deductions from the full annual rent were £24. He and the last witness had compared their deductions after they had made them.

Mr. Kingdon, opening for the respondents, said that the first question, that of gross value, was one purely of evidence ; the second question involved the meaning of Section 25 (2), and how it was to be applied to these circumstances. National divestment was foreign to the question,

and it was not necessary to go into it. Was this particular hereditament to be divested of either the outer or the inner bank when the rest of the country was not to be considered as divested? The absurd and ridiculous point would have to be assumed that the bank was a building. Mr. Kingdon referred to the Interpretation Act, 1889, Section 3; Maxwell's *Interpretation of Statutes*, 5th Edition, p. 3; *Moir v. Williams* (1892), 1 Q. B., 264. The word "buildings" was not used in any abnormal sense, and an abnormal interpretation must not be taken in order to give an unthought-of intention to the Act. The banks were merely aggregations of soil, and the appellant would have to contend that every heap of slag and bunker was a building. He was not sure whether they were structures; they would have to be structures analogous to a building. "Appurtenant" had a very restricted meaning in law. He suggested that the words "appurtenant" and "used in connection with" postulated something which involved a very close and intimate relation with the buildings, and it must be considered when and for what purposes the banks had been put up. It was inconceivable to say that they were appurtenant to one little farm. If the buildings were destroyed that day, the dykes and walls would still be equally necessary. The dykes and banks were land, and land could not be appurtenant to land. (Leek, *Law of Uses and Profits of Land*, pp. 88, 89; *Norton on Deeds*, 1906 Edition, p. 252.) He did not suggest that the right to have the bank kept up would not be appurtenant to a farm or land. There had been no proof to the Commissioners, under Section 25 (4) (b), of works executed or expenditure of a capital nature incurred *bona fide* for the purposes laid down by the subsection.

C. Gerald Eve said he had inspected the farm on November 1, 1912, and came to the conclusion that the first valuation, £6,300, was a very fair valuation, and that the district valuer had done sufficient to meet the objection by lowering it to £6,000. £280 was a fair rent; from that he deducted £36 10s., viz., repairs and insurance £10, land tax £5, sea-bank repairs (54 chains) £18, drainage rate £3 10s., and capitalised the balance at twenty-five years' purchase, making £6,087 as the total value. To arrive at full site value, the house, trees, and live fences must be removed. The farm would let at £245 gross without buildings; from that he deducted £31, made up as follows: Repairs to 140 acres at 9d. £5, sea banks £18, land tax £5, drainage rate £3; and the balance, capitalised at twenty-five years' purchase, with the addition of £15 for the bridle-path, came to £5,365. Alternatively he valued it at £5,360 on an acreage valuation, viz., 139½ acres at £38, £5,301, 14 acres at £3 2s. 6d., £44, bridle-path £15. The value of the timber he estimated at £4, and of the live fences, at 1s. 3d. per yard, at £68. To put up a farm bailiff's cottage would cost £200, and the rest of the farm buildings £285. This added up to £557, which made the £650 allowed by the Commissioners as difference seem ample. If a new house and homestead were put up, the total value would be increased.

Cross-examined: He thought a buyer would have given that price in April, 1909. The existing buildings were proper and necessary for the farm. A buyer would get an extra rent if he put up a farmhouse, but it would not be remunerative. He had no scale by which to apportion the

value between the land and the buildings. In practice no man would attempt to let the farm bare. It would pay the owner of this farm to put up the bank again. He had no knowledge of the subsoil of the land between the banks. Big landowners did not raise the rent of old tenants.

Re-examined : In his opinion the land was not building land.

George Edgar Clark and Alfred Cooley were then called for the appellant and respondent respectively, and gave evidence that they had agreed the levels of the farm and the height of the banks.

John Murray Kerr, district valuer for part of Lincolnshire, said the farm was first inspected on October 9, 1911. After the objection to the valuation he discussed the values with Mr. Eagles, and though he thought the figures were right, he served an amended valuation. On November 1, 1912, he made a field-to-field valuation which confirmed the figures. He took twenty-five years' purchase of the net rent, which worked out at £6,087. An alternative acreage valuation was £5,988, say, £6,000, as follows : 136 acres at £43, 3 acres of sea banks at £25, 14 acres of outmarsh at £3 2s. 6d. The full site value, he estimated, on the basis of the annual value, at £5,365, or alternatively at £5,360 on the value per acre, viz., 139½ acres at £38, salt marsh £44, bridle-path £15. The timber was of very little value, about £4. The hedges were agreed at 95½ chains, and could be reproduced at 1s. 3d. per yard. The house was really a cottage, and could be re-erected for £200; the rest of the buildings were not worth more than £285 on April 30, 1909. He valued the fences at £68.

Cross-examined : In arriving at full site value he took off the house, buildings, fences, and house drainage. He did not know whether a field-to-field valuation was made at first. Mr. Eve and he had worked out the valuation jointly in consultation. He had not been on the ground when he wrote the letter of April 16, 1912. He would naturally value separately the land inside the banks and the rest. He had not thought there were 150 acres inside the banks, and had not known definitely the area of the saltings. He thought a new homestead similar to the present one could be built for £550; it would probably be a six-roomed cottage, but would be equal to the needs of the farm. He had not cubed up the house. The stable could be put up for £75. He made his valuation on the basis that the landlord would have erected a homestead. He thought the land could be let at 35s. per acre without the buildings. His difference between an equipped farm and a divested farm was £4 6s. 8d. per acre. He did not know whether £10 per acre was the county council standard for equipping a farm. He did not think the buildings were too much. In arriving at the divested value it had to be assumed that the land was to be used for the same purposes as before.

Re-examined : If the buildings were new, divestment would be more than £4 6s. 8d. per acre. He thought £280 was a fair rent. He had not based the value on the rent set out in Form IV.

Harry M. Jonas said he made a valuation and inspection on November 21, 1912, not knowing the figures on either side. £6,000 was the value in the open market. His valuation was as follows: Gross annual value £285 10s.; deductions, repairs, and insurance £28 10s., sea banks £9, land

tax £5, drainage rate £3 10s., in all £46; the balance £239 10s., net annual value at 25 years' purchase and adding £10 for timber came to £5,997 10s. On an acreage basis he made it £6,042, say, £6,000, viz., 136½ acres at £42, 3 acres at £25, and 14 acres at £7; £20 more to be added if the right of way were done away with. The full site value he estimated at £5,380, viz., 136½ acres at £38, 3 at £25, 14 at £7, and £20 for the right of way. He valued the timber at £10, the hedges at £60, and the house and buildings at £570. He thought the land had no value except as agricultural land, and would not as a practical man call it building land. There was a natural accretion there, and the banks were not so necessary as they had been. Reclamation of the land was a commercial possibility. He did not think the risk of flooding depreciated the value of the land.

Cross-examined: His attention had not been called to a judgment of the Court of Sewers in 1862 when he made his estimate. In the spring of 1912 the property would have been worth probably 5 per cent. more than his estimate. Twenty-five years' purchase was not the limit for land not in danger from the sea. He did not agree that £10 an acre was a right allowance for equipment. To replace the house would cost £560, and the rest of the buildings £505.

Re-examined: New buildings would add to the capital and increment value. The judgment of 1862 did not refer to extraordinary liability. The liability to flood was not seriously to be taken into account.

James Eley inspected the farm on November 12, 1912. He estimated the total value at £6,000, made up as follows: House and farm buildings £540, hedges £45, timber £5, 105 acres at £43, 31 at £30, 3 at £15, and 14 at £2 2s. 6d. Alternatively, he estimated it at £6,280 on the basis on twenty-five years' purchase of the net annual value, viz., £280 less £38, viz., repairs £13 10s., insurance £1, land tax £5, drainage £3 10s., sea banks £15. The full site value he estimated at £5,472, putting the gross rent at £242, and deducting from that £23 10s. for repairs.

Cross-examined: The landlord invariably did the repairs. He had arrived at the total value first. To re-equip the farm would cost between £750 and £800.

Ben Killingworth had inspected the farm with the last witness. His estimate of the total value was £6,066, as follows: House and buildings £550, hedges £40, trees £5, land on an acreage basis £5,470. Alternatively, twenty-five years' purchase of the net annual value, viz., £280, less £36 deductions. Divested, £243 5s. could be obtained as gross rent; allowing £27 for deductions, and capitalising the balance at twenty-five years' purchase, the result was £5,400, which, with the addition of £15 for the bridle-path, gave a full site value of £5,415.

Cross-examined: He thought £6,066 was precisely the figure which would have been got for the farm.

William Andrew Eagles gave evidence that he had made the original valuation.

Cross-examined: His district comprised about 220,000 acres. He took twenty-six years' purchase of the net rent. Time would not allow of a field-to-field valuation, but he did not think such a valuation was necessary.

He had not measured up the live fences, nor cubed the buildings. He made sufficient notes for the full site valuation to be made.

Mr. Kingdon, summing up for the respondents, said that gross value under Section 25 (1) was the price which was expected to be realised by a willing seller in the open market. Valuation was not a simple matter; it had to be considered what a purchaser was going to get out of his purchase at the time and in the future. The value of the farm was greater at the present than it had been on April 30, 1909. The tenant took the farm in 1908 at a rent of £280; he knew the value of the property, and it was admitted that the rent was a fair one. The respondents' witnesses supported the Government valuation; they said they could get that amount for the farm, and could have got it at the date of the valuation. They also took twenty-five years' purchase of the net rent, which was the number of years taken by Mr. Hall. In Mr. Trustram Eve's evidence there was nothing either for or against the respondents' valuation. The evidence of Mr. Simons and Mr. Young agreed to a sixpence; their net rent was £255, but Mr. Simons only took twenty-one years' purchase, whereas $23\frac{1}{2}$ years' purchase would give the respondents' value. No prudent man would take into account the possibility of such a high tide as in 1810; such a tide was an act of God. Mr. Hall had estimated the cost of repairs and management at $12\frac{1}{2}$ per cent., but Mr. Hall was accustomed to big properties, and such a percentage was too high for a farm like this one. He also allowed £14 for repairs to the sea banks, whereas Mr. Simons put it between £8 and £9; the difference in the figures must be due to extraordinary repairs, and such repairs would fall on the whole wapentake, and not on the farm only.

As to divested value, a purchase was an instrument of profit, and the purchaser might be going to sell the land stripped, or with similar buildings upon it. The fallacy of the appellant's case was that the same amount was to be deducted whether the buildings were old or new. In this case if buildings worth £1,000 were put up, the total value would immediately become higher. He asked that the question of costs should be left to abide the result of the case in a higher court.

Mr. Allen, in reply, said that there was not a very wide difference between the witnesses on the two sides with regard to total value; the difference was in the number of years' purchase for capitalisation. Mr. Killingworth had said that the farm would have fetched £6,066 but not more; if that evidence was correct it helped the appellant, and confirmed Mr. Simons' valuation, as it was admitted that there had been a rise in value since April 30, 1909. Mr. Gerald Eve and the district valuer were supporting a Government department, and came with a certain amount of bureaucratic feeling. The sea banks would have a material influence on the mind of a purchaser, as they were broken in 1883. As to repairs, the estimates of Mr. Hall and Mr. Jonas were the same, namely, £28.

With regard to full site value, Mr. Gerald Eve said that all the buildings could be replaced for £553. The figure of £4 6s. 8d. per acre given by him as the difference between the farm with and without equipment was ridiculously low. The farm could not be carried on so well without the buildings, and a six-roomed cottage would not be suitable.

Not a penny more rent could have been obtained if the buildings were new. The Government's contention was that, given a stationary rent, as the years passed the value of the buildings decreased, and therefore the value of the land correspondingly increased. The appellant claimed to be entitled to divest the sea banks, and to do that he must prove that they were either buildings or structures within Section 25 (2). He submitted that in law there was no doubt that they were buildings: "building" had a different meaning in law to the general meaning of a structure covered by a roof. In *Lary v. London County Council* (1895), 2 Q. B., 577, a wall was held to be a "building"; in *Long Eaton Recreation Grounds Company v. Midland Railway* (1902), 2 K. B., 574, a railway embankment was held to be a "building"; no distinction could be made between a sea bank and a railway embankment. The banks had been put there by the labour and expenditure of man, and should therefore be divested (*Herbert's Trustees v. Inland Revenue* (1912), S. C., per Lord Johnston, at p. 958, and Lord Cullen at p. 963). If the word "appurtenant" was to be taken to include something outside the buildings, the words "used in connection with" must have a still wider meaning. The sea walls protected not only the land but at times the buildings also; they were used with the lands and the buildings (*Commissioners of Taxation v. Trustees of S. Mark's Glebe* (1902), A. C., 416). He submitted that the land between the banks had been improved as building land by their erection; the banks had made it possible to build there. He agreed that the question of costs should be left to a higher tribunal.

Mr. Kingdon, in reply, contended that all the cases quoted depended on their special facts, and that none of them had any bearing on the present case.

The Referee by his award found the following values:—

| | | | | |
|-----------------------|-----|-----|-----|--------|
| Gross value | ... | ... | ... | £6,015 |
| Total value | ... | ... | ... | 6,000 |
| Full site value | ... | ... | ... | 5,295 |
| Assessable site value | ... | ... | ... | 5,280 |

In arriving at full site value he made no deduction for divestment of the two sea walls and the open dykes, nor did he make any deduction for the sea walls under Section 25 (4) (b) and the provision immediately following Section 25 (4) (e).

For the appellant: William Allen, instructed by Lewin, Gregory & Anderson.

For the respondents: F. W. Kingdon, assistant solicitor to the Inland Revenue.

Before SIR ALEXANDER STENNING, *Referee*, 4th March, 1913.

M. BERG *v.* THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—NO OBJECTION—RAISING QUESTION OF CORRECTNESS ON APPEAL AGAINST ASSESSMENT OF UNDEVELOPED LAND DUTY—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), ss. 28, 33.

This purported to be an appeal against the assessment of undeveloped land duty on a piece of land situated between 50 and 56, Barnwell Road, Brixton, of which, together with the adjoining house, the appellant was lessee. The only point relied on by the appellant at the hearing was that in the provisional valuation—which, he alleged, he had never received—the site value of the land had been put at £100, whereas the land could be bought freehold for £20, and it would be impossible to build on it or to obtain the permission of the authorities to build there.

Mr. Shaw, on behalf of the respondents, pointed out that the provisional valuation had been sent to the appellant by registered post on June 30th, 1911, and that as it had not been objected to it became settled by lapse of time. This appeal was against an assessment of undeveloped land duty, and though in the grounds of appeal the question of the provisional valuation was also raised, that could not now be appealed against. It was not possible for the Commissioners to waive the point that the values in the provisional valuation were settled. The land in question would be subject to revaluation in 1914, and it would then be open to the appellant to object to the valuation. It might be possible for the appellant to argue that under Section 17 (4) he was not liable to undeveloped land duty, if, in fact, he occupied the land together with a dwelling-house, but as the appellant had not put forward any grounds in support of his appeal, he asked that the appeal should be dismissed with costs.

Awarded: No objection was taken to the provisional valuation within sixty days of the date on which the copy of the provisional valuation was served, therefore no appeal lies. Costs of appeal to be paid by the appellant.

Appellant in person.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before JOHN M. AITKEN, ESQ., *Referee*, 4th March, 1913.

J. R. C. MCGUFFIE *v.* THE COMMISSIONERS OF INLAND REVENUE.

REVERSION DUTY—RENUNCIATION OF LEASE—WHETHER PRICE PAID FOR LESSEE'S INTEREST "COMPENSATION PAYABLE" BY LESSOR—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 13 (2)—REVENUE ACT, 1911, s. 3 (2).

A building site was let by the appellant's predecessor on a lease for ninety-nine years, expiring at Whitsunday, 1929. The lease was

renounced at Whitsunday, 1911, the appellant acquiring the lessee's whole interest for a payment of £100. The value of the benefit accruing to the appellant on which reversion duty was payable was determined by the Commissioners to be £84, no deduction being allowed in respect of the amount paid for the lessee's interest.

For the appellant it was maintained that under Section 13 (2) of the Finance Act, 1910, the £100 paid by him for the lessee's interest should be deducted from or set off against the benefit accruing to him on the ground that it was "compensation payable" by the lessor at the determination of the lease.

For the respondents it was argued that the payment by the appellant to the lessee, being voluntary and not obligatory under the lease, could not be regarded as "compensation payable" by the lessor, and therefore could not be made a deduction in ascertaining the amount of reversion duty.

The Referee *decided* that the £100 paid to the lessee could not be deducted.

For the appellant: Lidderdale & Gillespie, Castle Douglas.

For the respondents: H. Watson, of the Solicitor's Department, Inland Revenue.

Before JOHN M. AITKEN, ESQ., *Referee*, 4th March, 1913.

GODFREY HEATHCOTE'S TRUSTEES *v.* THE COMMISSIONERS OF INLAND REVENUE.

REVERSION DUTY—LESSOR BOUND ON EXPIRY OF LEASE TO TAKE BUILDINGS AT VALUATION OR RENEW LEASE—RENUNCIATION OF LEASE BEFORE EXPIRY AND GRANT OF NEW LEASE—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), ss. 13 (1), (2), and 41—REVENUE ACT, 1911, s. 3 (2).

The appellants' predecessor granted a lease for a period of ninety years expiring at Whitsunday, 1920. The annual rent or tack-duty was 15s., and there was a stipulation in the lease that the lessor "should be bound at the expiry of this lease to take the houses built on the said subjects" (the ground leased) "at the valuation of men to be mutually chosen or renew the lease for another period of ninety years at the rent and under the conditions above mentioned." By arrangement between the lessor (the appellants) and the lessee, the lease was (by formal renunciation incorporated in the new lease) determined at Whitsunday, 1911, and a new lease granted for ninety years from that term on the same conditions as in the old lease, but at an annual rent of 20s. in place of 15s. as formerly.

The arrangement for a new lease was entered into merely in order to facilitate the completion of a title to the property by the lessee as heir of his father (his immediate predecessor in the lease) and to avoid expense.

The Commissioners claimed that the value of the benefit accruing to the lessor was £180, being the total value at the determination of the lease, £195, less the total value at the grant of the lease, £15, and assessed the reversion duty at £12 12s. 11d., being £18 less discount in terms of Section 3 (2) of the Revenue Act, 1911.

The appellants maintained that as the new lease was a renewal of the previous lease under an obligation to renew contained in that lease, an occasion for the assessment of reversion duty had not arisen, and in any event no benefit accrued to them beyond the increase of 5s. in the annual rent of the new lease.

For the respondents it was argued that the new lease was not granted in strict conformity with the obligation to renew contained in the old lease, and therefore the appellants were not entitled to found on Section 41 (paragraph 5) of the Finance (1909-10) Act, 1910.

Awarded: That the value of the benefit accruing to the appellants on which reversion duty might be charged, amounted to £5.

In a note to his award the Referee (after stating the facts and arguments) said:—

I think that the contention of the Commissioners that the new lease cannot be regarded as a renewal of the previous lease in pursuance of the obligation to renew contained in that lease is well-founded. But, while agreeing with them to that extent, I think that in making out the notice of assessment, they ought, on the strength of their own contention that the old lease had been determined, to have made an allowance for the value of the houses as provided for in the lease, should a renewal of it not take place. I have made that allowance, with the result that, on the agreed-on figures for total values the amount of the value of the benefit accruing to the lessor is £5, being the excess of the total value on the occasion (less compensation) over the total value of the land at the time of the original grant of the lease; in reality, it is the 5s. of increased tack-duty capitalised at twenty years, at which rate the original tack-duty of 15s., and the new tack-duty of 20s. had been capitalised to bring out the £15 of original total value, and £20 for land (exclusive of houses £175) in the £195 of total value on the occasion.

For the appellants: Lidderdale & Gillespie, solicitors, Castle Douglas.

For the respondents: H. Watson, of the Solicitor's Department, Inland Revenue.

Before SIE ALEXANDER STENNING, Referee, 5th March, 1913.

LORD ALINGTON v. THE COMMISSIONERS OF INLAND REVENUE.

REVERSION DUTY—DETERMINATION OF LEASE—TOTAL VALUE—
BENEFIT ACCRUING TO LESSOR—FINANCE (1909-10) ACT, 1910
(10 EDW. VII., c. 8), s. 13.

This was an appeal against an assessment of reversion duty on the determination of a lease of 29 and 31, Brunswick Place, Hoxton. The

lease, which was at a rent of £55 per annum, determined at Christmas, 1910, and a new lease of the premises was granted by the appellant at £70 per annum, the tenant covenanting to spend £130 in repairs and alterations.

At the commencement of the hearing Mr. Ollivant explained to the Referee that he was only appearing in case any point of law should arise, in which event he proposed to address the Referee on behalf of the appellant, but that otherwise the appellant's case would be conducted by Mr. Vigers.

Mr. Leslie Vigers said that in the claim for reversion duty served upon the appellant the values of the property were set out as follows: Total value at grant of lease £1,100, total value at determination £1,650, benefit accruing to lessor £550, duty £55. The figure, £1,650, appeared to have been calculated on an estimate of what the two houses might let at, viz., £82 5s., capitalised at twenty years' purchase. The value at the grant of the lease was twenty years' purchase of the rent reserved in the lease, which expired at Christmas, 1910. If that figure was right the rent in the present lease, viz., £70, should be taken as the basis to reckon the value at the determination.

On the appellant's estate it was the practice not to take the utmost rent from the tenant; the tenant always had a margin of from 40 to 45 per cent., and he had fixed the rent at Christmas, 1910, on that basis. He tried to get £75, but ultimately advised the appellant to accept £70 per annum. The tenant was to make such alterations as made the two houses suitable for his business of shirt and collar dressing. The appellant did not object to £1,100 as the total value at the grant of the lease, but £70 per annum should form the basis of the total value at the determination.

In 1910 it was not worth more than eighteen years' purchase, which made £1,260, leaving an increment of £160. Though it might be that the tenant might let the houses at £82 5s., the appellant did not get that rent. When the tenants of the houses were paying £55, the undertenants were paying £110. The appellant was being penalised for treating his tenants well, for he was being charged duty on a sum which he could never get.

Cross-examined: The total value for the purposes of provisional valuation was agreed between his firm and the district valuer at £1,650. The dispute in this case was as to the total value at Christmas, 1910. There was a difference in value between April, 1909, and Christmas, 1910. The houses could not have been sold at Christmas, 1910, for more than £1,260, and in April, 1909, he did not think they could have got more than £1,150. He could not say what the property might have fetched if it had been sold not subject to any lease. He did not agree that if a landlord let his premises for less than he could get it was impossible to calculate the value on the basis of the rent received only.

Edward Blunt (cross-examined) said he had conducted the negotiations with the district valuer, and in November, 1911, had agreed the total value as at April, 1909, at £1,650. He thought that was the value at that date. At Christmas, 1910, they could not get the rents which they had estimated to get. The new lease was entered into about Christmas,

1910, for 43½ years at £70 per annum. He could not say that £70 was the maximum rent which could be obtained; it was not a rack-rent. The tenant undertook to do certain repairs at a cost of £130, but the lease was for 48 years, and the repairs were to make the premises suitable for the tenant's business.

Mr. Shaw, for the respondents, said that the whole question turned on Section 13 (1) and (2). The Commissioners had to ascertain the total value at determination, as defined in Section 25, and the excess, if any, over the total value at the date of grant was to be deemed "benefit accruing to the lessor." The value at the date of grant was not disputed. In November, 1911, Mr. Vigers' firm was negotiating with the district valuer; at that time the new lease was in force, and they must have known the rent which was being obtained; and with that knowledge they agreed the total value as at April 30th, 1909, at £1,650. He suggested that the total value at Christmas, 1910, was precisely the same. It was common ground that £70 was not the true rack-rent, it was a secure rent, a farming rent. In April, 1909, as regards one of the houses £65 was being paid by an undertenant, and there was a sublease of the other house in existence at £45.

Bernard Culmer Page said he was well acquainted with values in the district, and had inspected the property in question. At Christmas, 1910, No. 29 should have let at £42, No. 31 at £65. He had formed that opinion on rents obtainable for similar properties in the neighbourhood. £70 was a farming rent, not a rack-rent. There was no alteration in values in the district between April, 1909, and Christmas, 1910. He estimated the total value at Christmas, 1910, at £1,605—fifteen years' purchase.

Cross-examined: He had inspected the premises a week before; they were in an ordinary state of repair. He understood that money had been spent on them, but the actual money spent did not necessarily increase the value by that amount, though from a purchaser's point of view the value depended on the state of repair.

Charles Green, the district valuer, said he had valued the premises as at April 30th, 1909, and agreed the total value at £1,650. He first inspected the premises in March, 1911. Between 1909 and 1910 there was no difference in the value.

Cross-examined: The tenant did all the repairs. In March, 1911, the premises were in a bad state, and repairs were then in progress.

Roland Ashford Dash, superintending valuer for North London, said that he had inspected the property, and thought that if there had been no large outlay there had been no alteration in the value of the premises as premises between April, 1909, and Christmas, 1910. It was the custom on many estates to grant leases at farming rents. Mr. Vigers was trying to substitute for total value under the Act some other value.

Cross-examined: He agreed with fifteen years' purchase.

Mr. Shaw said that Section 25 did not leave any doubt as to what total value was; it was the market value of the fee simple, which, by Section 41, meant the fee simple in possession not subject to any lease. Mr. Vigers had been regarding what the premises were worth to Lord Alington, but it

did not follow at all that that was their value. The value of the benefit was defined in Section 13, and it did not necessarily follow that it represented the actual pecuniary benefit received by the lessor.

Mr. Ollivant, for the appellant, said that to make use in November, 1911, of knowledge obtained in 1910 as to the value in 1909 would have been dishonest. Some attention must be paid to the words "the value of the benefit," otherwise, in a case where no benefit accrued, a man would be taxed, not on what he got, but on what he might have got. In *Anglesey v. The Commissioners of Inland Revenue* (1913), 1 K. B., 356, no benefit in fact accrued, and therefore it was held that no tax was payable. It was admitted that all repairs were done by the tenant, and the landlord was not put to any capital outlay. The question was, What would a purchaser pay in the open market? At the end of a long lease the value of the repairs had largely worn out and a purchaser would have to make a large outlay. The rents of the sublessees were higher because the lessees had put their money into repairs. A deduction was allowed by Section 13 (2) of all capital expenditure by the lessor, and it made no difference whether the landlord paid a sum for repairs or took a lower rent and allowed the tenant to repair.

Mr. Shaw, in reply, said that the *Anglesey* case was decided solely on the ground that the grant of the new lease was "compensation payable by the lessor" at the determination of the lease within the meaning of Section 13 (2).

Awarded: That there was no evidence before the Referee that the assessment made by the Commissioners was based on the sum of £82 5s., as representing the net rent received from the premises on April 30th, 1909. That the reversion duty payable by the appellant is the sum of £37.

For the appellant: R. C. Ollivant, instructed by Nicholl, Manisty & Co.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before H. M. COBB, Esq., Referee, 2nd April, 1913.

H. HYLTON-FOSTER AND OTHERS *v.* THE COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—AGRICULTURAL LAND—AGREEMENT
ENTERED INTO BEFORE APRIL 30TH, 1909—POWER TO DETERMINE
—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 17 (5).

This was an appeal against an assessment of undeveloped land duty for the year ending March 31st, 1911, on certain property of which the appellants were trustees. The land in question was on April 30th, 1909, held by tenants under three agreements, and the ground of appeal was that

the agreements could not have been determined by the appellants before March 25th, 1911. The material parts of the agreements were as follows:—

1. Line's agreement was from year to year from Lady Day, 1900, and contained the following clause: "The landlords shall have power on giving one calendar month's notice in writing to the tenant . . . at any time or times to resume any part or parts of the said lands for the purpose of building or of making roads or sewers or of planting or of selling or letting for building or taking for any other purpose making to the tenant reasonable compensation. . . ."

2. Burnett's agreement was half-yearly from Lady Day, 1904, and contained the following clause: "And also upon giving one calendar month's notice in writing to the tenant . . . at any time or times to resume any part or parts of the said premises for the purpose of building or of making roads or sewers or of planting or of selling or of letting for building or taking any such part or parts to or for any other purpose or purposes excepting agricultural or market garden making to the tenant reasonable compensation. . . ."

3. James' agreement was for one year from Lady Day, 1904, and then half-yearly, and contained a clause identical with that in Burnett's agreement.

Mr. Nussey, for the appellants, said that no claim had been made for undeveloped land duty for the year 1909-10, as the tenancies were recognised by the Commissioners, but the claim was for duty from one month after April 30th, 1910, to March 31st, 1911. The property was divided into five for the purposes of valuation, and the appeal was concerned with three tenancies, as there were only two fields outside these tenancies, one held on a weekly and the other on a quarterly tenancy. The question was: When could the agreements be determined by the appellants? They contended that the first date on which they could give notice after the passing of the Finance Act, 1910, was September 29th, 1910, so that the first possible date of determination would be March 25th, 1911. The Commissioners contended that the agreements could have been determined at any time at a month's notice.

The landlords under the agreements could take the land at one month's notice on making compensation, for certain definite purposes—such as sale or making roads—only; they could not take it in order to let it to another tenant. They could not give notice till a contract of sale had been entered into, and in this case there had been no sale enabling them to give notice. No cause for giving notice having arisen, an action for damages would lie against them by all the tenants if they had given the tenants notice on the passing of the Finance Act. It would have been a breach of the quiet enjoyment clause. In *Johnson v. The Edgware Railway Company*, 35 Beav., 480, in which case the landlord was empowered to resume possession of any part of the land in case it should be required by him "for the purpose of building, planting, accommodation, or otherwise," it was held that the landlord could not give notice to the tenant, and that the words "or otherwise," must be read as being *ejusdem generis*. The Master of the Rolls said: "All deeds must be construed most strongly against the grantor." The proviso in that case was almost the same as in this.

Mr. Shaw, for the respondents, said that this was a question of some importance as very many agreements were in similar form to those in question. The Commissioners contended that the appellants had power to determine the tenancies within the meaning of Section 17 (5) by giving one month's notice. The Commissioners principle was : They considered that where a landlord had to allege a requirement which did not exist, in order to determine, he had no power to determine, but that where the power to determine depended on the landlord's discretion, he had the power to determine within the meaning of the section ; and that was not affected by the fact that he had to do something before determining. In the case quoted the landlord was not going to use the land himself. In this case the words were entirely different, and the landlords had power to determine for any purpose ; the exemptions in the last two tenancies merely restricted the uses to which the landlords could put the land, if they determined. The purposes of the landlords had nothing to do with the tenant, who was not aggrieved, as he got compensation. The whole question was whether it was possible for the landlords to determine. The power was not limited, as the section said any part or parts. The words used in these agreements showed that the *ejusdem generis* rule was not to be applied.

Mr. Nussey, in reply, said that certain conditions were bound to arise before they could give notice. They could not arrange a sale immediately on the Act being passed, nor could they arrange a scheme of building or road-making within a month. The words "or otherwise" were as wide as the words in these agreements. The section said "the earliest date at which it is possible." This was a question of it being possible to exercise the power to determine, which was a question of fact based on law.

Awarded: That the owners could have obtained possession prior to the 25th March, 1911.

For the appellants : C. A. Nussey (Nussey & Fellowes).

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before GEORGE HEWSON, ESQ., *Referee*, 31st August, 1912.

THE EARL OF PORTSMOUTH *v.* THE COMMISSIONERS OF INLAND
REVENUE.

REVERSION DUTY—CONSIDERATION FOR LEASE—CUSTOM OF ESTATE
—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 13 (1).

This appeal had reference to premises held under mode of lease dated 1st July, 1869, which expired on the death of His Majesty King Edward VII., at the rent of £2 10s. per annum.

The grounds of appeal were contained in a statement which *inter alia*

stated that in accordance with the custom of the estate the lease was granted on the terms that the lessee should, previously to the granting of the lease and in consideration of same, erect the buildings thereon, and that therefore at the date of the lease the value of the land and buildings within the meaning of Section 13 (2) of the Act was the same as the present value allowing for depreciation, and that as there was no practical difference no reversion duty was payable, and secondly, that under the custom of the estate a renewal of the lease was always granted at a slightly increased rent, say in this case £2 10s., the capitalised value of which is £62 10s., which added to the value of the property at the date of the lease, and deducting the total for the total value fixed under the provisional valuation, would leave only a nominal sum on which duty would be payable. It was also suggested that the lessee might make a claim under the Town Tenants Act, 1906, but that if made the landlord would not admit it.

The decision of the Referee was as follows :—

The total value of the lands fixed under the provisions of the Finance Act is £482, against which no appeal has been lodged. The rent reserved in the original lease, dated 1st July, 1869, appears to have been a nominal rent payable for six cottages which have been sublet at rents of 2s. to 3s. 6d. weekly. The tenant appears to have been left in occupation of the premises since the expiration of the lease, but no fresh letting has been made and no claim has so far been made by the tenant for compensation under any Act. I am of the opinion that the capitalised value of the rent if sold in the open market at the time of the granting of the said lease would have been £120. The duty payable is therefore £36 on a capital net sum of £362.

Before JOHN LOPDELL, ESQ., Referee, 11th September, 1912.

T. & C. MARTIN, LIMITED, v. THE COMMISSIONERS OF INLAND REVENUE.

REVERSION DUTY APPEAL—NO JURISDICTION TO HEAR APPEAL—
FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 13 (1).

In this case the Commissioners of Inland Revenue claimed the sum of £42 reversion duty in respect of the surrender of a lease. The reversioners appealed against the assessment on the grounds that (1) an alteration in value took place between 30th April, 1909, and the 1st July, 1911, when the lease was surrendered; (2) that the lease was surrendered by the lessee because of a fall in the value of the premises, and it was not determined within the meaning of the Act by effluxion of time; (3) the assessment of total value is wrong, inasmuch as the surrender of the lease has lessened the value of the premises to the reversioners instead of increasing it; (4) the reversioners hold the premises with others at the

yearly rent of £187 10s., and no account has been taken of the liability of this rent.

The Referee's decision was as follows :—

The appellants not having appealed as in manner provided under the provisions of Section 27, Subsection (2) against the Provisional Valuation No. 2942 of the premises in question, and which was duly served about 26th September, 1911, and which fixed the total value at £3,024, and original site value at £1,800, therefore, under the provisions of Section 33, Subsections (a) and (b) I do not consider that the appeal can be sustained, and I find that the appellants are liable for the amount of reversion duty claimed, viz., £42. In the event of this interpretation of the Act being incorrect, I find on the facts of the case, and after inspecting the premises, that no benefit has accrued to the appellants by reason of the surrender of the lease, and therefore they are not liable for the reversion duty claimed.

Before JOHN LOPDELL, ESQ., Referee, 6th February, 1913.

THOMAS HOARE *v.* THE COMMISSIONERS OF INLAND REVENUE.

INCREMENT VALUE DUTY—ASCERTAINMENT OF VALUE ON OCCASION—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 13 (1).

In this case the premises were held under mode of lease dated 19th April, 1880, for 250 years at the yearly rent of £5 15s. The lessee's interest in the premises became vested in the appellant, Thomas Hoare, and in April, 1911, the said appellant assigned the lessee's interest for £620. On the provisional valuation the gross valuation was fixed at £680, deductions £565, site value £115. From the particulars of the valuation made on the occasion of the sale it appeared that the Commissioners of Inland Revenue found the total value to be £735, being the cash price plus the capitalised value of the head rent (£5 15s. × 20), and then deducted from that total the "deductions" allowed when the provisional valuation was made (£565) and thus arrived at the site value on the occasion (£170).

The appeal was based on the grounds that the total value and the "occasion" site value were in excess of the value that should have been fixed, and that "the like deductions as are made under the general provisions of the first part of the Act," mentioned in Section (2) (b) of the Finance (1909-10) Act, 1910, are not the identical deductions allowed when the provisional valuation was made, that in the case under considera-

tion the proper deduction was the difference between £735 and £115, viz., £620, and that no increment duty was payable.

The Referee found that the total site value of £735 was correct, that the occasion site value of £170 was also correct, and that the Commissioners were entitled to payment of the statutable amount of increment value duty.

Before JOHN LOPDELL, ESQ., Referee, 10th February, 1913.

THOMAS CAMPBELL *v.* COMMISSIONERS OF INLAND REVENUE.

REVERSION DUTY—SURRENDER OF LEASE—VALUE OF GOODWILL—
DEPRECIATION—AMENDED NOTICE OF APPEAL—FINANCE
(1909-10) ACT, 1910—REVENUE ACT, 1911, s. 2.

This was an appeal against reversion duty claimed by the respondents on the determination of a lease by surrender. The premises had been used for many years for the business of millinery by Thomas Campbell and his predecessors in title. In September, 1901, Thomas Campbell, owner in fee simple, made a lease to his son, Francis John Campbell, for a term of twenty-five years at £220 per annum with clause of surrender every five years. On 26th August, 1910, the said Francis John Campbell surrendered the premises to Thomas Campbell. The lessee during his occupancy failed to make the business a success, and he attributed his failure to the growth of new shops in the same business in the vicinity. Subsequently to the surrender of the lease the premises were let at £335 per annum for a term of twenty-five years. The appellant appealed against the assessment of reversion duty on the ground that the premises were not at the date of the surrender of the lease of any greater value than they were in 1901, the date of the grant of the lease, and consequently no benefit accrued to the lessor. On the contrary, the value of the goodwill had decreased.

After the appointment of the Referee, the appellant applied to him under Rule 7 (8) of the Land Values (Reference) Rules, 1910, dated December 5th, 1910, for liberty to amend the notice of appeal by the addition of the following words :—

- (A) In valuing the premises as of the date of grant of lease the Commissioners have refused to take into consideration the payments made in consideration of the lease amounting to £3,000, and the compensation payable by the lessor at the determination of the lease amounting to £300.
- (B) The Commissioners deny the right of the lessor to claim exemption under Section 14 (1) of the Finance (1909-10) Act, 1910. The amendments were received.

The provisional valuation was fixed at £4,686, and the amount of the assessment (value of benefit to lessor) was fixed at £1,606.

The award of the Referee was as follows :—

The total value at determination of the lease, viz., £4,686, being the same amount as set out in provisional valuation, stands. I find the total value at grant of lease to be £3,960, and the value of the benefit accruing to lessor to be £726, on which sum he is liable for the statutable amount of reversion duty, having regard to the provisions of the Revenue Act, 1911, Section 2.

I find against the claim of the appellant as set out in paragraph (A) on amended notice of appeal annexed, no legal evidence having been given to sustain such claim.

I consider that the appellant is not entitled to claim exemption of duty under the provisions of Section 14 (1).

Certain of the Decisions of Referees, &c., reported or referred to in this issue are or may be under Appeal. The results of such Appeals will be reported or referred to in forthcoming issues of these Reports, but in the meantime the possibility of such decisions being reversed on Appeal should be borne in mind.

LAW CASES.

[KING'S BENCH DIVISION.]

LORD MOWBRAY *v.* THE ATTORNEY-GENERAL.

[DECEMBER 3RD, 1912.]

Revenue—Mineral Duties—Valuation—Form 5—Legality—Finance
(1909-10) *Act*, 1910 (10 *Edw. VII.*, c. 8), s. 20.

On a claim by the plaintiff for a declaration that Form 5 issued by the Commissioners of Inland Revenue under Section 20 of the Finance (1909-10) Act, 1910, was illegal, unauthorised, and *ultra vires*, and that he was under no obligation to comply with the requisitions contained therein, the Commissioners, being of opinion that Form 5 could not be supported, consented to an order being made following the form made in *Dyson v. Attorney-General* (28 T. L. R., 72 ; [1912], 1 Ch., 159).—(29 T. L. R., 115.)

[KING'S BENCH DIVISION.]

HORNBY *v.* THE COMMISSIONERS OF INLAND REVENUE.

[DECEMBER 12TH, 1912.]

Provisional Valuation—Purchase Price—Actual Value—Finance
(1909-10) *Act*, 1910.

This was an appeal by way of petition against the decision of a Referee in the case of the valuation of certain land under the terms of the Finance (1909-10) Act, 1910.

The petition related to freehold premises known as "The Rest," Aldeburgh, which were purchased by Mr. Gerald Noel Money for £2,150 in 1886, and on which, it was asserted, he spent some £400 in improvements. Mr. Money died in 1895, leaving the premises to three trustees, of whom the petitioner was one, upon trust for sale, at their discretion, and to hold the proceeds on trusts under which Mrs. Edith Money, wife of the Rev. Walter Money, was tenant for life.

It was alleged that in 1902 the trustees expended a further £50 on the drainage of the house. In May, 1908, Mrs. Edith Money-Coutts, the owner of adjacent premises known as "Osborne Cottage," offered to purchase "The Rest" and a cottage and stabling near it for £4,000, but Mrs. Edith Money was then unwilling to sell. Mrs. Money-Coutts continued desirous of purchasing, and finally Mrs. Money consented to the sale, which was effected for £4,000, "The Rest" being sold for £3,500 and the cottage and stabling for £500.

It was asserted that the value of residential property in Aldeburgh rose steadily from 1895 till 1909. The Commissioners of Inland Revenue, on September 21st, 1911, served the trustees with a copy of their provisional valuation of "The Rest," showing the original gross value at £2,000, the original full site value at £600, the original total value at £2,000, and the original assessable site value at £600.

THE REFEREE'S DECISION.

On appeal to Mr. Charles Bidwell, as Referee, he fixed the gross value at £2,140 and the assessable site value at £740. Against this valuation the petitioner now appealed, on the ground, *inter alia*, that the original gross value as determined by him was not equal to the amount which, if the fee simple of the land had been sold on April 30, 1909, in the open market by a willing seller on the terms laid down in Section 25 (1) of the Finance (1909-10) Act, the premises might have been expected to realise.

On behalf of the Commissioners it was contended that Mrs. Money was not a willing seller, and that a "fancy price" was given by Mrs. Money-Coutts in exceptional circumstances, which made her very desirous to get the property. Reliance was placed on a letter which she had written in which she said that she was giving at least £1,000 more than the premises were worth.

Evidence was also called as to the value of the premises, one valuer putting it at £1,250 and saying that, if he had heard that an independent offer of £3,500 had been made for the property, he should not have taken that into consideration.

The Solicitor-General said this was the first case in which *viva-voce* evidence had been called in the High Court on the Revenue Paper.

JUDGMENT.

Mr. Justice Horridge, in delivering judgment this morning, said this was an appeal by Mr. Francis Villiers Hornby against the decision of the Referee, whereby he fixed the gross value of "The Rest," Aldeburgh, at the sum of £2,140. No question had been raised before him as to the deduction of £1,400 made to arrive at the assessable site value of £740, and the only question was as to whether the decision as to the £2,140 was correct.

The decision was given under Sections 1 and 2 of the Finance (1909-10) Act, 1910, and the gross value had to be arrived at under Section 25, Subsection (1), of that Act. The Act prescribed that gross value meant the amount which the fee simple of the land if sold at the time (which

was April 30, 1909) in the open market by a willing seller in its then conditions, free from encumbrances and free from payments, charges, or restrictions other than rates and taxes, might be expected to realise. Two expert gentlemen were called before his Lordship on behalf of the respondents, the Commissioners of Inland Revenue, and they gave evidence, one that the value of the property, applying this test, was £2,000, and the other thought its value was £1,250. It was said, however, that he ought not to accept these figures because from May, 1908, until August, 1910, a Mrs. Money-Coutts had been willing to pay the sum of £3,500 for the property and in August, 1910, in fact contracted to pay that sum, and it was urged that he ought to accept the sum of £3,500 as being the gross value within the meaning of the section.

His Lordship thought such an offer, if made to a willing seller in the open market, would lead one to the conclusion that it was strong evidence of the true value within the section. This offer, however, was not in his judgment made in the open market nor to a willing seller.

The facts appeared from the correspondence, from which it appeared that the particular lady, Mrs. Money-Coutts, was extremely anxious to buy from the trustees who were trustees for her sister, Mrs. Money, that Mrs. Money was until May, 1910, reluctant to sell, and by a letter of June 1, 1910, Mrs. Money-Coutts said that in offering £4,000 for "The Rest" and a cottage (the value of which was not disputed to be £500) she was offering a full £1,000 more than their worth. His Lordship thought if the trustees had been willing sellers, and if the property had been in the market for sale, Mrs. Money-Coutts would have had to give very much less for the property. When he came to consider how much less, the only evidence he had as to value was that of the witnesses called on behalf of the Commissioners, and the valuations of the two gentlemen called were both below the figure placed upon the gross value by the Referee.

Under these circumstances his Lordship could not see his way to interfere with the decision, and this appeal must be dismissed, with costs.—(*The Times*, 13th December, 1912.)

[KING'S BENCH DIVISION.]

EARL FITZWILLIAM *v.* THE COMMISSIONERS OF INLAND REVENUE.

[DECEMBER 19TH, 1912.]

Revenue—Reversion Duty—Whether Value of Licence attached to Premises to be taken into Account—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 13.

A lease of certain property having a cottage upon it was granted by F in 1861 for a term of fifty years at an annual rent of £4. Upon the expiry

of the lease in April, 1911, there was upon the property a fully licensed public-house. In June, 1911, F granted a new lease of the premises for fourteen years at a rental of £29 per annum.

Held, that in estimating the value of the land for the purposes of reversion duty the value of the licence must be taken into consideration.—(29 T. L. R., 159.)

[*This case, which was appealed against, was heard in the Court of Appeal on May 8th, 1913. The Court, Buckley, L.J., dissenting, affirmed the decision of Horridge, J.*]

[KING'S BENCH DIVISION.]

INLAND REVENUE COMMISSIONERS *v.* GRIBBLE.

[DECEMBER 4TH, 5TH, AND 18TH, 1912.]

Revenue—Reversion Duty—Exemptions—Reversion “Purchased” before April 30th, 1909—Reversion Conveyed to Trustees of Marriage Settlement—Whether Reversion “Purchased”—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 14, sub.-s. 1.

In Section 14, Subsection 1, of the Finance (1909-10) Act, 1910, which provides that “Where, in the case of a reversion to a lease purchased “before the thirtieth day of April, nineteen hundred and nine, the lease “on which the reversion is expectant determines within forty years of the “date of the purchase, no reversion duty shall be charged . . . on the “determination of the lease,” the word “purchased” is used in a commercial sense and with a more restricted meaning than the one given to the word “purchaser” in real property law. Therefore, where the reversion to a lease has been conveyed to trustees to hold on the trusts of a marriage settlement and the marriage has taken place, the reversion has not been “purchased” within Section 14, Subsection 1, and in such a case, therefore, there is no exemption from reversion duty on the determination of the lease.—(82 L. J., K. B., 169.)

[Decision affirmed by Court of Appeal, Buckley, L.J., dissenting, April 23rd, 1913.]

[KING'S BENCH DIVISION.]

INLAND REVENUE COMMISSIONERS v. ANGLESEY
(MARQUESS).

[JANUARY 14TH AND 15TH, 1913.]

Revenue—Reversion Duty—Determination of Lease by Surrender—New Lease at same Rent for longer Term—“ Compensation payable by Lessor ”—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 13—Revenue Act, 1911, s. 3 (2).

Two leases of premises were surrendered to the lessor, who thereupon granted a new lease of the premises comprised in the two old leases to the lessee at the same rent for a slightly longer term. On a claim by the Crown for reversion duty under Section 13 of the Finance (1909-10) Act, 1910, the Referee decided that no benefit had accrued to the lessor by reason of the termination of the old leases, that the grant of the new lease must be taken as compensation payable by the lessor under Section 13, Subsection (2) of the Act, and therefore that no reversion duty was payable:—

Held, that the Referee was right in so holding.

Petition by way of appeal by the Commissioners of Inland Revenue against the decision of a Referee appointed under the Finance (1909-10) Act, 1910, upon the appeals of the respondent, the Marquess of Anglesey, against assessments made upon him to reversion duty.

The respondent was the freeholder of the hereditaments Nos. 89, 91, 92, High Street, Burton-on-Trent, and was, in relation to the respective leases thereof, which had determined (by surrender) as hereinafter appearing, the lessor for the purpose of the Finance (1909-10) Act, 1910, and the person to whom the benefit, if any, accrued from or by reason of the determination of the said leases for the purposes of the provisions of that Act, relating to reversion duty.

On December 19th, 1910, the following leases—namely, (i.) a lease dated June 22nd, 1869, of 89, High Street, Burton-on-Trent, whereby those hereditaments were demised for a term of ninety-nine years from April 5th, 1869, at a yearly rent of £15, and (ii.) a lease dated July 31st, 1868, of 91 and 92, High Street, Burton-on-Trent, whereby those hereditaments were demised for a term of ninety-nine years from October 10th, 1867, at a yearly rent of £10, were duly surrendered by one James Campbell, in whom they were then vested, to the respondent as the person then entitled to the freehold reversion expectant on the determination of the two leases.

Upon the surrender of those leases the respondent by a lease dated December 19th, 1910 (hereinafter referred to as the new lease), demised the following freeholds—namely, (a) 89, 91, and 92, High Street, Burton-on-Trent; (b) 90, High Street, Burton-on-Trent; and (c) a malthouse at the rear of 90, High Street—to the said James Campbell for a term of sixty-nine years from April 5th, 1910, at a yearly rent of £40. The new

lease was expressed to be made in consideration of the surrender of the two leases above referred to, and of the rent and the lessor's covenants reserved by and contained in the new lease. It did not contain any apportionment of rent as between the various hereditaments thereby demised, but the yearly rent of £40 thereby reserved was in fact made up as follows—namely, £15 in respect of 89, High Street; £10 in respect of 91 and 92, High Street; £10 in respect of 90, High Street; and £5 in respect of the malthouse.

On May 31st, 1911, the Commissioners gave notice in writing to the respondent that they had (as the fact was) made the following assessments upon him—namely, (a) an assessment to reversion duty amounting to £4 17s. 1d. in respect of the benefit accruing to him by reason of the determination, on December 19th, 1910, of the lease of June 22nd, 1869; and (b) an assessment to reversion duty amounting to £15 in respect of the benefit accruing to him by reason of the determination on December 19th, 1910, of the lease of July 31st, 1868.

On June 27th, 1911, the respondent duly notified his intention of appealing to a Referee against those assessments on the grounds (*inter alia*) that no benefit in fact accrued to him by reason of the determination of the leases, and that no deduction had been allowed under Section 13, Subsection (2), of the Finance (1909-10) Act, 1910, or otherwise in respect of the value of the new leases granted to the lessee, which was in effect compensation to the lessee for the determination of the old leases.

The Referee having heard these appeals gave the following decision in respect of each assessment: "That no benefit has accrued to the lessor by reason of the termination of the lease, and that the grant of the new lease must be taken as compensation payable by the lessor."

At the hearing before the Referee it was proved or agreed (*inter alia*) that no part of the total value of the hereditaments comprised in the old leases, as at December 19th, 1910, was attributable to works executed or expenditure of a capital nature incurred by the lessor during the respective terms of the old leases; and further, that unless the grant of the new lease was to be taken as compensation payable by the lessor at the determination of the old leases no such compensation was in fact so payable.

The Commissioners appealed.

Horridge, J., read the following judgment: In this case there were on December 19th, 1910, two leases existing under which James Campbell was lessee—one at a rental of £15, of No. 89, High Street, Burton-on-Trent, which would expire on August 4th, 1968, and the other at a rent of £10, of Nos. 91 and 92, High Street, which would expire on October 9th, 1966. On December 19th, 1910, a new lease was granted by the respondent to James Campbell of Nos. 89, 91, and 92, High Street, together with other property, for a term which would expire on April 4th, 1979.

It is agreed that, so far as these properties are concerned, the portion of the rent applicable to them was the same amount as the two rents of £15 and £10. In the lease it is recited that it was granted in consideration of the surrender of the two existing leases. It is also agreed that if the two previous leases had been surrendered without any new leases being

granted the value of the benefit accruing to the lessor by reason of the determination of the leases would have been the sums of £395 and £1,340.

The Crown claim that under Section 13, Subsection (1) of the Finance (1909-10) Act, 1910, and Section 3, Subsection (2) of the Revenue Act, 1911, they are entitled to a duty of such an amount as regards each of such sums as would with compound interest at the rate of 4 per cent. per annum for the residue of the respective terms for which the surrendered leases were granted produce in each case one-tenth of such amounts. The Referee has decided that no benefit has accrued to the lessor by reason of the termination of the lease, and that the grant of a new lease must be taken as compensation payable by the lessor.

The question whether or not the Crown are entitled to the duty they claim depends upon the construction of the words in Section 13, Subsection (2), of the Finance (1909-10) Act, 1910, "subject to the deduction . . . of all compensation payable by such lessor at the determination of "the lease." The contention of the Crown was that the agreement by the respondent to grant a new lease of the premises at the same rent in consideration of the surrender of the two leases was not compensation payable by such lessor at the determination of the lease, and that the only compensation which could be properly deducted from the total value at the time of the surrender was compensation either payable under the provisions of the lease itself or compensation recoverable in respect of the lease owing to custom or statute. It is quite clear in this case that the only benefit, if any, which the respondent received by the surrender was the fact that he was enabled to include several properties in one lease of a somewhat longer duration than that of either of the existing leases on the property in question.

Upon the best consideration I can give to Section 13, Subsection (2), I do not see anything which compels me to give so narrow a meaning to the words "compensation payable by such lessor at the determination"; and if instead of granting a new lease the respondent had agreed to pay in cash the two sums which were the increased value to the lessee of his holdings, and the lessee had then paid that sum back as the consideration for the new lease, I think the respondent would have been entitled to say that the sum he paid for surrender was compensation payable on the determination of the leases. I think the new lease, which represented the terms upon which the surrender was obtained, would stand on the same footing, and was rightly treated by the Referee as compensation payable on the determination of the lease.

Counsel for the Commissioners argued before me that the repealed Subsection (3) of Section 14 of the Act of 1910 provided for one case where a new lease was granted, and that therefore, as in that selected case an allowance was made, it was clear that duty was payable although a fresh lease was granted. I think this must entirely depend upon whether or not, where the new lease is the consideration for the surrender, the rent of the new lease is such as to show, as it does in this case, that the reversioner obtained no benefit from the surrender. He also relied upon Section 3, Subsection (2), of the Act of 1911, as showing that there was

a provision for diminishing the payment to be made when the lease is determined by the vesting of the lessor's interest and the lessee's interest in the same person before the expiration of the term ; but even if this section is applicable to a case of surrender of a lease, as to which I express no opinion, the section only operates when there is reversion duty payable, and the question really comes back under Section 13, Subsection (2), as to whether or not reversion duty is payable.

In my view the Referee was right in this case in holding that within Section 13, Subsection (1), no benefit accrued to the respondent, because within Section 13, Subsection (2), the grant of the new lease must be taken as compensation payable by the respondent. This appeal must be dismissed with costs.—(82 L. J., K. B., 283.)

This decision was reversed by the Court of Appeal, April 30th, 1913, when :

The Master of the Rolls, in the course of his judgment, said that the appeal was against a decision of Mr. Justice Horridge, who had held that reversion duty was not payable by Lord Anglesey. In the circumstances of the present case the Crown contended that the old leases had determined, and of course they had determined. Then the Crown claimed that under Section 13 of the Finance (1909-10) Act, 1910, reversion duty was payable on the value of the benefit accruing to the lessor by reason of such determination. Mr. Danckwerts had argued, and there was force in the argument, that it was difficult to see that any benefit had accrued to the lessor from the transaction. He did not get one penny more rent ; he did not get possession of the land any sooner, and in fact he was kept out of possession of the land for some years longer. It was not, however, either the right or the duty of the Court to consider the policy of the Act, whether it worked fairly or not ; their sole duty was to construe the language used by Parliament. Now Section 13 (1) charged reversion duty on the value of the benefit accruing to the lessor by reason of the determination of the lease. Then Section 13 (2) went on to define the value of the benefit accruing to the lessor. It was to be "deemed to be the amount (if any) by which the "total value (as defined for the purpose of the general provisions of this "part of this Act relating to valuation) of the land at the time the lease "determines," subject to certain deductions, "exceeds the total value of "the land at the time of the original grant of the lease to be ascertained "on the basis of the rent reserved and payments made in consideration of "the lease."

It was consequently necessary to work a subtraction sum. It was not easy to see the basis of the calculation, but there it was, and the Court must give effect to it as far as possible. The total value of the land at the time when the lease determined was to be put on one side, and the total value of the land at the time of the original grant of the lease was to be put on the other. The total value of the land at the time of the original grant of the lease was not to be ascertained by the definition of total value given in Section 25 for the purpose of the general provisions of that part of the Act relating to valuation, but on the basis of the rent reserved and payments made in consideration of the lease. Then what was the total

value of the land at the determination of the lease as defined by Section 25 ? For the purposes of the present case there was no difference between the total value as defined by Section 25 (3) and the gross value as defined by Section 25 (1), that was the amount which the fee simple of the land, if sold at the time in the open market by a willing seller in its then condition, free from incumbrances and from any burden, charge, or restriction (other than rates or taxes) might be expected to realise. In the present case the figures were stated, and in the case of each lease there was a considerable difference between the total value of the land at the time of the original grant of the lease and the total value at the time of the determination of the lease.

What the Court had to do was to see whether there was anything in the provisions of Section 13 (2) which entitled Lord Anglesey to say that there was something which ought to be deducted from the total value of the land at the time of the determination of the lease. First it was necessary to deduct any part of the total value which was attributable to any works executed, or expenditure of a capital nature incurred, by the lessor during the term of the lease. Those words had no application to the present case. Then there had to be deducted all compensation payable by the lessor at the determination of the lease. It was said that the surrender of the old leases was in consideration of the grant of the new lease, and that the grant of the new lease was compensation payable by the lessor at the determination of the old leases. His Lordship was unable to accept that view. He did not think that the grant of a new lease could be compensation payable by the lessor, but in any event compensation payable by the lessor had, in his opinion, no reference to that which was purchase money paid by the lessor that he might get possession of the property and grant a new lease. Compensation, in his opinion, meant a sum payable by the terms of the lease or by some contract made during the currency of the lease, as, for instance, if a lessee agreed to erect buildings in consideration of being compensated at the determination of the lease. His Lordship entirely declined to attribute to compensation the consideration, given either in money or by means of the grant of a new lease, which led to the lessor acquiring the property of the lessee. It had been said that if the landlord was bound by a contract to pay for buildings erected during the lease by the lessee, that payment was really purchase money of part of the demised premises. It was nothing of the kind. It was something which must be paid under a contract, and it did not affect the demised premises.

The attention of the Court has been called to other sections of the Act, but his Lordship did not think it necessary to go through them. They certainly did not assist Lord Anglesey. It was doubtful whether Section 14 (3), which had been repealed, ought to be referred to at all, and the other sections did not throw any light on the matter. His Lordship agreed with the contention of the Crown that reversion duty was payable. That was made clear by Section 3 (2) of the Revenue Act, 1911. He could not agree that Section 3 (2) had no reference to a transaction like the present. The surrender was a transaction by which a lease determined on the vesting of the lessor's interest and the lessee's interest in the same

person before the expiration of the term for which the lease was granted. He thought therefore that the duty must be calculated as stated in the case, having regard, however, to the provisions of Section 3 (2). That being so, with great respect to Mr. Justice Horridge, the appeal must be allowed.

The Lord Justices also delivered judgment allowing the appeal.—(29 T. L. R., 496).

[KING'S BENCH DIVISION.]

INLAND REVENUE COMMISSIONERS *v.* JOICEY (No. 2).

[JANUARY 13TH AND 15TH, 1913.]

Revenue—Mineral Rights Duty—Copyholder having Right to Support—Subjacent Minerals giving Support Owned by Lords of Manor—Grant to Lessee of Lords of Manor by Copyholder of Right to work Supporting Minerals—"Rights to work Minerals"—Finance (1909-10) Act, 1910 (10 Edw. VII. c. 8), s. 20, sub-ss. 1, 2 (a).

The lords of a manor leased to a colliery company the right to work minerals lying under copyhold land of the manor belonging to the respondent subject to the latter's right to support. By a "lease" the respondent granted to the company at a "rent" based on the amount of minerals brought to the surface, the right to "work, get and carry away" the minerals which afforded the support to his land, without leaving it any support.

Held, that this was not the grant of a right to work minerals within the meaning of Section 20, Subsection (1) of the Finance (1909-10) Act, 1910, but of a right to let down the surface, and consequently that the respondent was not liable to pay mineral rights duty under that subsection in respect thereof.

Appeal from the decision of a Referee under the Finance (1909-10) Act, 1910.

The respondent, James Joicey, was the copyhold owner in fee simple of certain lands in the manor of Lanchester in the township of Kyo in the county of Durham. The said land was of ancient copyhold tenure. The Ecclesiastical Commissioners for England were the lords of the manor, and as such were entitled to the minerals under the above-mentioned copyhold lands. By a lease dated January 30th, 1873, they demised (*inter alia*) the coal thereunder to the South Moor Colliery Company, Limited (referred to herein as "the company"), for the term of forty-two years from October 11th, 1864. The respondent was not a party to this lease. There was evidence by a Mr. Cooper, an expert on manorial customs in Durham, of a custom of the manor entitling the lords or their lessees to work the minerals under the respondent's copyhold land, provided that in so doing they did not let down or injure the surface of ancient copy-

hold lands, and it was admitted that the respondent, therefore, was entitled to support. On September 1st, 1897, a deed was executed between the respondent and the company whereby the former demised to the latter "full power and liberty from time to time to work, get and carry away all the coal, ironstone, and fireclay and other minerals, if any, under or adjoining to the said lands of the said James Joicey which may for the time being be held by the said colliery company without leaving or making any support for the surface of the said lands or any buildings for the time being thereon" for the same term as the above lease of January 30th, 1873, or any extension thereof, upon payment of the "rent" of $1\frac{1}{4}d.$ per ton of coal, &c., wrought and brought to bank out of mines under the respondent's land.

On February 16th, 1911, the Commissioners assessed the respondent on the basis of the above "rent" to mineral rights duty under the description "Right to work minerals described as a 'mining easement.'" The respondent gave notice of appeal on March 16th, 1911, a Referee was appointed, and the appeal heard on August 9th, 1911. The Referee, on October 3rd, 1911, decided that the right demised by the indenture of September 1st, 1907, was not a right to work minerals nor a mineral wayleave, and was therefore not assessable to mineral rights duty.

The Commissioners appealed.

Horridge, J., read the following judgment: The question in this case is whether the amounts payable to the respondent under an indenture dated September 1st, 1897, are rental value of rights to work minerals within Section 20 of the Finance (1909-10) Act, 1910.

At the time of the indenture the South Moor Colliery Company, Limited, were the lessees of the coal under certain land of which the respondent was copyhold tenant, and by that indenture, after reciting that the respondent claimed that the colliery company were not entitled so to work the coal, ironstone, and fireclay under or adjoining to his said lands as to let down or otherwise injure or interfere with the surface or the buildings for the time being thereon erected, it was witnessed that the respondent demised to the colliery company full power and liberty from time to time to work, get, and carry away all the coal, ironstone, fireclay, or other minerals, if any, under or adjoining the said lands of the respondent without leaving or making any support for the surface of the said land or of any buildings for the time being thereon. In consideration of this demise the colliery company agreed to pay to the respondent the clear rent or sum of $1\frac{1}{4}d.$ for every ton of coal, ironstone, or fireclay which should from and after July 1st or should thereafter be wrought and brought to the surface by the colliery company; and they also covenanted by Clause 7 to make good or pay for any damage to houses, buildings, or stone walls which might be caused by the colliery company's workings.

The question which I have to consider is whether this payment is really a rent, and whether it is rent paid in respect of the right to work minerals. The Solicitor-General's contention before me was that as the respondent was a copyhold tenant he was entitled to the possession of the minerals, and therefore by the agreement he gave the right to work them. By the letter of Mr. Cooper of July 8th, 1912, it appears that any possession of

the respondent was liable to be interfered with by the right of the Ecclesiastical Commissioners, as lords of the manor, and their lessees, in this case the colliery company, to get the minerals, subject to the rights of the respondent to the surface support of his land, and I am of opinion that the so-called rent under this indenture was money payable in respect of the leave by the respondent to let down the surface. I do not think this is a right to work minerals, although no doubt if it had not been granted the position would have been that the colliery company could not have worked out as much coal as they could, having regard to the advantage granted them by the indenture. I dismiss this appeal with costs.—(82 L. J., K. B., 344.)

[Decision affirmed by Court of Appeal, May 8th, 1913.]

[KING'S BENCH DIVISION.]

LUMSDEN *v.* INLAND REVENUE COMMISSIONERS.

[DECEMBER 18TH, 19TH, 1912, AND JANUARY 13TH, 1913.]

Revenue—Increment Value Duty—Sale of Fee Simple of Property—Mode of Assessment—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 1, 2, 25.

The respondent was assessed to increment value duty on the occasion of a sale by him of the fee simple of a dwelling-house and shop subject to tithe of the capital value of £33. Under the provisional valuation of the property the "original assessable site value" was £658. The consideration for the sale was £750, and the gross value of the property, as defined by Section 25, Subsection (1), of the Finance (1909-10) Act, 1910, was £658. There had been no variation in the full site value between the date of the valuation and the date of the sale, that value being £228. The amount of the deduction for roads to be made was £90.

Held, that increment value duty was payable in respect of the property upon the sum of £125, that amount being ascertained in the following manner: Under Section 2, Subsection (1), the increment value of land is to be deemed to be the amount by which the site value of the land, on the occasion on which increment value duty is to be collected, exceeds the original site value of the land; the value of the site on the occasion of the sale was £750, the consideration money, subject to a deduction under Section 25, Subsection (4), of the difference between the gross value of the land and its value divested of buildings and certain other things specified in Sub-section (2), amounting to £430. Adding to that sum the £90 deduction for roads, made the total amount of deduction £520; and the difference between that sum and £750, namely, £230, was the site value of the land on the occasion of the sale. Increment value duty was therefore payable on the difference between £230 and £105, the original site value of the land, namely, on the sum of £125.

Special Case stated by a Referee under the Finance (1909-10) Act, 1910.

The decision on the appeal in respect of which the notice of appeal hereinafter mentioned has been given, is as follows :—

1. In this appeal, as questions of law were in dispute, the Referee had been requested by both parties to state his award in the form of a Special Case, and he accordingly found the following facts, and submitted the following questions of law for the opinion of the Court.

2. By an assessment Robert John Lumsden (hereinafter called “the appellant”) was assessed to increment value duty under Sections 1 and 2 of the Finance (1909-10) Act, 1910 (hereinafter called “the Act”), in respect of a dwelling-house and shop, No. 32, Lansdowne Road, Forest Hall, Northumberland, and a gross duty of £25 was charged in respect of an alleged gross increment value of £125. Notice of appeal against the assessment was duly given by the appellant.

3. The occasion on which the duty was alleged to become payable was a sale on August 23rd, 1910, by the appellant of the fee simple of the said dwelling-house and shop to a buyer, who took possession for the purpose of carrying on a business in the shop. The sale was of the property subject to the burthen of tithe, which tithe is referred to in the provisional valuation, of the capital value or burthen of £33.

4. On February 9th, 1911, the said dwelling-house and shop (hereinafter called “the property”) were provisionally valued under the Act as at April 30th, 1909, and this valuation was accepted by the appellant raising no objection within the time prescribed by the Act. [The valuation found that the original assessable site value was £105.]

5. The consideration for the transfer on sale on the occasion giving rise to the claim was £750.

6. At the time of the sale the fee simple of the property, if sold in the open market by a willing seller in its then condition free from incumbrances and from any burden, charge, or restriction, other than rates or taxes, might have been expected to realise the sum of £658.

7. It was admitted that there had been no variation in the full site value between April 30th, 1909, and August 23rd, 1910, and that that value was £228 on each date. It was also admitted that £90 represented the amount of deduction for roads to be made under Section 25, Sub-section (4) (b), from the total value to arrive at the assessable site value. The capital value of the tithe was admitted to be £33.

8. It was contended on behalf of the appellant : That the increment value is either (a) the difference between the original assessable site value of £105 (fixed by the said provisional valuation) and the assessable site value on the occasion of the sale, which is in the present case to be taken to be the value of the consideration for the transfer on the sale subject to the like deductions as are made under the general provisions of Part I. of the Act as to valuation for the purpose of arriving at the site value of land from the total value, or (b) the difference between the original full site value of £228 and the admitted full site value of £228 on the present occasion when the increment value is to be collected. In order, therefore, to arrive at the result here on the footing of (a), the following considerations must be applied : (1) The fee simple was sold subject to tithe of £33

capital value for £750 ; therefore the gross value (which in this case is the fee simple value free from tithe—see Section 25, Subsection (1)—is £783. (2) It was admitted the full site value at the time of sale was £228, the same as in the provisional valuation. (3) Therefore the difference between the gross value and full site value was £555. (4) The sale price gives the total value—namely, £750—for that was the price subject to tithe. (5) Therefore the “assessable site value” is the total value (£750) after deducting (a) the deduction of £555, and (b) £90 attributable to roads. (6) The “assessable site value” for calculating the increment duty is £105 : that is, after deduction from £750 of £555 + £90—that is, £645. (7) There is therefore no increment value. On the footing of (b), it is also the case that there is no increment value.

9. It was contended on behalf of the Commissioners of Inland Revenue: (1) That under Section 2, Subsection (1), of the Act, the increment value is to be deemed to be the amount, if any, by which the site value of the land on the occasion, ascertained in accordance with the said section, exceeds the original site value of the land as ascertained in accordance with the general provisions of the first part of the Act. (2) That the site value of the land on the occasion was in this case the value of the consideration—that is, £750—subject to the like deductions as are made under Section 25, Subsection (4), to arrive at site value of land from total value. (3) That the first deduction to be made under and by virtue of Section 25 (4) (a) read with Section 25, Subsection (2), of the Act, is the difference mentioned in Section 25, Subsection (2)—that is, the difference between gross value and value divested. (4) That the gross value of the land being as found by the Referee £658, and the value of the site divested being also as found by him £228, the difference amounted to £430. (5) That there being no other deduction except the deduction for roads, which is found by the Referee at £90, the total amount of deduction is £520. (6) That deducting the £520 from the value of the consideration—namely, £750—the result is £230. (7) That this £230 is the site value of the land on the occasion arrived at in accordance with the provisions of the Act. (8) That increment value duty is exigible on the difference between £230, the site value on the occasion, and £105, the original site value of the land as found in the provisional valuation.

(10) The Referee was of opinion that contention (a) of the appellant was correct, and he accordingly awarded and decided that the appellant was not liable to pay any increment value duty on the occasion in question, and that the expenses of the appellant of and incidental to his appeal be borne and paid by the Commissioners of Inland Revenue.

If the Court should be of opinion that the contention of the Commissioners was correct, then he awarded and decided that the appellant was liable to pay the increment value duty claimed by the Commissioners.

Horridge, J., read the following judgment: The question in this case arises in respect of the sale of certain property, No. 32, Lansdowne Road, Forest Hall, Northumberland, on August 23rd, 1910, for £750, but subject to a tithe rent of the capital value of £33. The question for my decision is upon what basis the property ought to be assessed under Sections 1 and 2 of the Finance (1909-10) Act, 1910.

The case finds that it was admitted that there had been no variation in the full site value between April 30th, 1909, and August 23rd, 1910, and that the value was £228 on that date. It was also admitted that £90 is the right amount of deduction for roads to be made under Section 25, Subsection (4) (b), from the total value to arrive at the assessable site value. The capital value of the tithe was admitted to be £33. It is also found in paragraph 6 of the case that at the time of the sale the fee simple of the property, if sold in the open market, by a willing seller in its then condition, free from incumbrances and from any burden, charge, or restriction other than rates or taxes, might be expected to realise the sum of £658; or, in other words, that under the conditions of Section 25, Subsection (1), the gross value of the land was £658. The original valuation of the land as on April 30th, 1909, appears as exhibit 3 to the case, and must be taken to be correct, as it was not objected to.

By Section 1 of the Finance (1909-10) Act, 1910, a duty is imposed to be paid on the increment value of any land. By Section 2 the increment value of any land shall be deemed to be the amount (if any) by which the site value of the land on the occasion on which increment value duty is to be collected as ascertained in accordance with that section, exceeds the original site value of the land as ascertained in accordance with the general provisions of that part of that Act as to valuation. The original site value of the land is under the provisions of Section 25, Subsection (4), to be deemed the assessable site value, and there is no dispute that such assessable site value was at the time £105. The contest before me was with regard to the manner in which the site value is to be ascertained on the occasion, or what I may call the occasional site value.

By Subsection (2) (a) of Section 2 the site value of the land shall be taken to be the value of the consideration for the transfer, subject to the like deductions as are made, under the general provisions of this part of the Act as to valuation, for the purpose of arriving at the site value of land from the total value. Both sides agree that the £90 was a proper deduction, and the dispute was as to what further deductions should be made.

The contention of the Crown was that under Section 25, Subsection (4) (a), the further amount to be deducted was the same amount as was to be deducted for the purpose of arriving at full site value from gross value, and the gross value was found by paragraph 6 of the case to be £658, from which, if £228 the full site value is taken, a deduction of £430 is arrived at, and that if this £430 and the £90 for roads are deducted from the purchase price of £750, it leaves a figure of £230, or an excess over the £105 of £125, which is liable to duty.

On behalf of the respondent it was contended that when the sale in fact takes place the purchase money is substituted as the actual sum, and that actual sum must be worked into Section 25 in the following manner: The purchase price was said to correspond under Section 25, Subsection (3), with the total value of the land which was, it was argued, the market price to be obtained for the land as it was; but in order to arrive at the gross value it was necessary to add the capital value of the tithe rent to which it was subject, making the gross value of the land in this case the sum of

£783. It was then said, in order to arrive at the deduction to be made under Section 25, Subsection (4), you must take the agreed full site value of £228 from that sum, leaving the sum of £555, and this sum of £555 plus the £90, making together the sum of £645, when deducted from the purchase money of £750, gave the value on the occasion £105, which was the same sum as the original site value.

If the contention of the Crown is well founded, although there has been no increase in the full site value, as stated to be admitted in paragraph 7 of the case, yet there was nevertheless an increment value. In other words, the owner having sold the property for £750 subject to the tithe rent-charge, when the Referee finds its gross value which would be free of the tithe rent-charge was only £658, there was a fund created upon which increment duty could be charged.

I do not think I can adopt the argument put forward on behalf of the respondent, as I think it violates the provisions of the Act. Under Section 2 the consideration money is to be subject to the like deductions as are made under Section 25; and in order to introduce the purchase money as distinguished from the gross value you must first assume that the purchase price is to be substituted under Section 25, Subsection (3), for the total value of the land, for which I can find no justification, especially as the case distinctly finds that the purchase price exceeds the gross value under Section 25, Subsection (1), and therefore exceeds the total value under Section 25, Subsection (3). Even if this is done, you have then got to ascertain the gross value by adding the tithe rent-charge to the total value, whereas the section provides that the first thing to be ascertained is the gross value, and the total value is ascertained by deduction from it.

I think the true view is that "like deductions" mean deductions to be made by ascertaining under Section 25 the difference between the gross value and the full site value. In this case the amount happens to be the same as would be arrived at by the same calculation in arriving at original site value; but this is only because the gross value and the full site value are found by the case to have been the same, both on the occasion of the original valuation and at the time of the purchase. If either the gross value or the full site value had been altered in the meantime, the figure for deduction would be correspondingly altered.

In support of the arguments of the respondent the following passage, in the opinion of Lord Johnston in *Herbert's Trustees v. Inland Revenue*, was referred to: "I do not think that the definition of increment value in 'Section 2 (1) can be fairly read without concluding that the statute 'contemplates, in speaking of 'exceeds,' an excess of value at one point 'of time over value at another point of time of an actual and practical 'nature, and not an excess of value of a theoretical or purely mathematical 'nature. And this is confirmed so far by the fact that Section 2 (2), 'which provides how occasional site value is to be ascertained, makes the 'basis of that value (in the case of actual transmission, at any rate) real 'value, either actual consideration for transfer on sale or lease, or actual 'valuation at death, through subjecting that real value to the same 'deductions as are to be made under Section 25 for the purpose of 'arriving at original site value.' I do not think that this passage means

that Section 25, Subsection (2), provides that the actual sale price is to be imported for all purposes into Section 25, or for the purpose of ascertaining the like deductions under Section 2. It is merely referring to the provisions of Section 2, Subsection (2) (a). Even if it means this, it is only an observation made for the purpose of showing that under the Act the increment duty was imposed on real values, and not on a calculation based upon minus figures, and is in no way any portion of the direct decision of the Court, and I do not feel that I should be bound to follow it.

It was further contended before me that this statute is a statute for the purpose of taxing increment arising from the alteration in site value ; but if this argument is correct, I cannot see why Section 2, Subsection (2) (a), is enacted, because, if the purchase money is also to be introduced as a factor in making the deduction, the amount of the purchase money would be quite immaterial in arriving at the taxable increment, as it would merely be taken, in the first place, under Section 2, Subsection (2) (a), and then the deduction would be altered by the amount of the purchase price so as to make the result in no way depend upon the amount of the purchase money. Lord Johnston, in the opinion I have referred to, does use this expression : " I think it was . . . very much this "—speaking of the theory of the Act—" that the value of the bare land, or of land " divested of the results of human labour and expenditure, is increased, " not by the action of the owner, but by the action of circumstances, and " that therefore the State may, without injustice, exact a share of the " increase." But these words do not seem to me, whilst I agree with them to the extent to which they go, to prevent the effect of Section 2, Subsection (2) (a), being to add to the taxable increment the increase produced by fortuitous sale of the site at a price greater than would be otherwise its full site value.

It was further contended before me that the occasional site value which is referred to in brackets in the last paragraph of Section 25, Subsection (4), must be the full site value under Section 25, Subsection (2), as this is the only site value referred to in the section other than assessable site value, and that from this full site value, which in this case is agreed at £228, the deductions of £90 and £33 must be made, leaving the sum of £105 as the site value on the occasion. I do not think this is correct, as I think the words in brackets merely refer to the provisions as to assessment of occasional site value contained in Section 2.

I think in this case the contention on behalf of the Crown is correct—that you must take the purchase price, and the deductions to be made must be calculated under the provisions of Section 25 without endeavouring to alter this section artificially by introducing the purchase price into the calculation under them. I hold that £125 is liable to pay increment value duty.

The respondent must pay the costs of this appeal and the costs before the Referee incurred in respect of this question.—(82 L. J., K. B., 406.)

[VALUATION APPEAL COURT, SCOTLAND.]

[MARCH 6TH, 1913.]

COMMISSIONERS OF INLAND REVENUE *v.* WALKER.

Increment Value Duty—Occasional Site Value—Sale—Price including Elements other than Actual Value of Property—Matter Personal to the Occupier—Fear of Disturbance—Finance (1909-10) Act, 1910, ss. 2 (2) (a) and 25 (4) (d).

Circumstances in which *held* (diss. Lord Cullen) that part of price paid was attributable to the personal element and fell to be deducted in ascertaining the assessable site value on the occasion.

Increment Value Duty—Deductions—“The like Deductions” as are made under the General Provisions of the Act as to Valuation for the purpose of arriving at the Site Value of Land from the Total Value—Finance (1909-10) Act, 1910, s. 2 (2) (a).

Held, that even where there had been no expenditure on the property since 30th April, 1909, the amount of the deduction was not necessarily that allowed in the original valuation, but must be ascertained afresh on the occasion on which increment value duty was to be collected.

This was an appeal by the Commissioners of Inland Revenue from the decision of Mr. Thomas Binnie, Referee, reported *supra* page 9, *sub nomine A B v. The Commissioners of Inland Revenue*. In the previous report Mrs. Catherine Walker is referred to as A B, her deceased husband, John Walker, as C D, and James Burns Walker, the purchaser, as E F.

The Court heard counsel on the case stated by Mr. Binnie, and thereafter on 17th December, 1912, made a remit to him to re-state the case, the following opinions being pronounced :—

LORD JOHNSTON: The important figures, with which we are presented in Mr. Binnie's statement, are—

| | £ |
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| Original total value as at 30th April, 1909, of a property in Dalry | 400 |
| Difference between original gross and original divested value | 380 |
| Original site value | 20 |
| Consideration on occasion of sale at 8th June, 1911 ... | 650 |

The Commissioners of Inland Revenue support their valuer in maintaining that, as no additional buildings were erected between 1909 and 1911, the occasional site value at 8th June, 1911, is to be ascertained by deducting £380, the original difference between gross and divested value, from £650, which, leaving £270 as the occasional site value, gives £250

as the increment value, and on this they demand increment duty. An appeal having been taken, a reference was made to Mr. Thomas Binnie, who has considered and decided the practical question, viz., that £70, and not £270, is the proper occasional site value.

But in doing so Mr. Binnie has been faced with certain questions, which it was necessary for him to decide in order to arrive at his result. Two of these questions are of a general character, and one of them at any rate of very wide bearing and of great importance, and Mr. Binnie has, I think, experienced some difficulty in deciding them, and in determining their bearing upon his practical conclusion. Against that conclusion the Inland Revenue has appealed to this Court, and their appeal necessarily brings up for consideration certain of the incidental points which Mr. Binnie had to decide.

It requires indeed a little study to comprehend the full bearing of the problem which Mr. Binnie had to solve, and also to appreciate the manner in which he has presented to the Court not merely his own practical conclusion, viz., that the occasional site value was £70, but the various questions which he had to entertain, and the effect upon his valuation of the alternative manner in which they may be decided by this Court. Having given the necessary consideration to Mr. Binnie's statement I think that he has probably in his own mind exhausted the subject. But I do not think that it appears sufficiently plainly on the surface how he has arrived at, and determined, certain points, and that too much is left by him to inference. Lest it be thought that we are reading too much into his statement, I should propose to your Lordships to send it back to Mr. Binnie for amendment.

I do not think that it would be desirable that we should say anything at present on the merits of the case, but should leave all questions entirely open until we hear from Mr. Binnie. If, on the case being returned by Mr. Binnie, we should think it desirable to hear parties further, we shall give them the necessary opportunity. But I hardly expect that further argument will be necessary.

I would suggest to Mr. Binnie that it would have been a more convenient way of stating his determination if, after giving the circumstances in which the appeal to him as Referee was taken, and the grounds of appeal stated in the formal notice of appeal, he had proceeded to state, as he has done, the contentions *pro* and *con* of the parties before him, and had then stated the conclusions in fact and in law to which he had come before arriving at the practical conclusion that the occasional site value was £70. He has not only reversed the process, by giving first his opinion on the practical question at the foot of page 5, and then going to the various questions which it was necessary for him to determine in order to arrive at his final result, but he has also not fully explained himself on certain of these questions.

It is necessary that we know from the Referee in reference to the original appellant's contention (*a*), first, whether as a matter of fact in his opinion the Commissioners of Inland Revenue had agreed as alleged, and, if there be any question as to whether his decision on the point is one of fact or law, what were the grounds for his decision; second, whether,

also as matter of fact, in his opinion an increase in value had taken place between 1909 and 1911, on the necessary hypothesis, of course, that the original valuation was a fair valuation.

In reference to the original appellant's contention (*b*) which raises an important question in law under Section 25 (4) (*d*), that subsection says that the assessable site value of land means the total value after deducting (*inter alia*) "any part of the total value which is proved to the Commissioners to be directly attributable . . . to goodwill or any other matter " which is personal to the owner, occupier, or other person interested for " the time being in the land." Now the Referee states that the appellant maintained that the consideration of £650 paid to her was greatly in excess of the value of the property in the open market at 8th June, 1911; that in paying that price the purchaser, James Burns Walker, was actuated, partly by sentiment, partly by family affection, and partly by dread of disturbance; and that in consequence under the above Section 25 (4) (*d*) a deduction fell to be made from the consideration on sale, in respect of goodwill or other matter personal to the purchaser, as occupier of part of the property. Now, unfortunately, the Referee does not expressly determine the questions of fact and of law which arise on this contention, but rather leaves us to infer what his determination is or must have been, if he had determined them—for I am not perfectly certain that he went that length. Mr. Binnie will have to state, whether he held in point of fact that in paying the purchase price James Burns Walker was or was not actuated by any of the considerations alleged, then whether in law he holds that the facts warrant a deduction under the statutory provision, and, assuming deduction competent in law, what deduction, if any, he considers should be allowed in respect thereof.

I am inclined to think that I understand the difficulty which Mr. Binnie has experienced in dealing with this branch of the appeal before him and the reason why he has stated his case in such an indeterminate form. I think it is to be implied that he thought that a portion of the purchase price was to be attributed to the considerations stated or some of them, but found it impossible for him to put a figure upon it, except by inverting the statutory process. Whether or not that was allowable to him I give no opinion at present. The statute contemplates the primary ascertainment of total value, which, in the case in question, is the consideration on sale, and then the ascertainment of site value by a series of deductions from total value, in terms implying that each such deduction is to be matter of separate ascertainment.

In its endeavour to maintain consistency with its theory, the statute has imposed on those who have to work it a good many feats difficult, if not impossible, of performance according to the letter, though probably they can be performed according to the spirit. But the Referee must make his endeavour to follow the statutory order. He must first satisfy himself that there is some personal element in respect of which deduction should be made. And if he is so satisfied, he must then value it. If he cannot do so directly, let him say so. If he has felt himself reduced to ascertain to the best of his ability the market value of the subjects, and to take the difference between this and the consideration on sale, as necessarily the

proportion of the consideration on sale given for the personal element, again let him say so, and we can then consider whether this course is justifiable under the statute.

I think therefore that to complete his statement of the case it is necessary that Mr. Binnie give a further statement, even if it be merely to the effect that he was satisfied that the purchase price was affected by certain personal matters, and that he could not arrive at an estimate of their value, or of the portion of the purchase price to be attributed to them, except by valuing as he has done. And he must put a figure on the deduction and not leave it to inference.

I would only add this to avoid possible misconception. The statute contemplates that the value for deduction under Section 25 (4) (a) should be made in the first place by the Commissioners. But Section 33 (1) provides an appeal against a refusal of the Commissioners to make any such allowance. The Commissioners have not directly disposed of this matter, but their method of dealing with the valuation must be regarded as an implied refusal, and I am of opinion therefore that this question was properly embraced in the reference to Mr. Binnie.

But it is possible that we may hold, after Mr. Binnie has obtempered the remit, that the deductions claimed cannot competently be allowed under the statute, and that the purchase price must be accepted as the occasional total value without deduction in respect of any personal consideration. And Mr. Binnie must therefore provide us with materials for disposing of the case, if necessary, on that hypothesis. The question then arises: £650 is the occasional total value; a large rise on the original total value of two years before, but it does not at all follow that the whole of this rise is attributable to rise in site value. On this alternative hypothesis Mr. Binnie must apply himself to the question, How much of that sum is to be attributed to a rise in the market value of the site, and how much to a rise in the market value of the buildings or other appurtenants to the site?

The contentions (a) and (b) for the Inland Revenue involve no facts, but merely questions of law. But the Referee should state what his determinations on these two points have been before proceeding to apply the particular conclusions to which he has come to the general practical question of valuation.

This conclusion should be stated, following the directions of the statute, Section 25 (4), thus—

| | | | | | | | |
|--|-----|-----|-----|-----|-----|-----|-------|
| | | | | | | | £ |
| Consideration on sale ... | ... | ... | ... | ... | ... | ... | 650 |
| Deduct— | | | | | | | |
| (Stated <i>seriatim</i>) any of the items (a) to (c) of | | | | | | | |
| Section 25 (4) which the Referee allows ... | | | | | | ... | |
| | | | | | | | <hr/> |
| Result—Assessable site value ... | | ... | ... | ... | ... | ... | £ |
| | | | | | | | <hr/> |

I trust that with the assistance of what I have said, Mr. Binnie may be able to state the case in a more exhaustive manner, but if he experiences difficulty we shall give him an opportunity of seeing us.

LORD SALVESEN : My Lord, I entirely agree. I just desire to emphasise one point I think you have adverted to in your opinion, and that is that *prima facie* what property fetches in the open market is the market value, although a valuator might have put it at less or more if he had been asked to estimate what it would probably fetch in the open market. I do not know upon what footing Mr. Binnie has arrived at his view that £475 was the market value of this particular property. Of course his view is quite consistent with what I have said if he has thought that there were considerations under Section 25 (4) (d) which entered into the question of price and added to it, but we do not know yet whether he took that view. But if he did take the view that there were no considerations which he could deduct under Section 25 (4) (d), then for my own part I think he must proceed on the footing that the consideration of transfer represented the market value, and proceed to consider the question how much of the appreciation effeired to site and how much to the buildings upon the site. It may be, probably often will be, that a professional valuation which parties have agreed upon turns out, when tested in the open market, to be an undervaluation, but it by no means follows that the whole appreciations or the whole difference is to be attributed to a supposed appreciation of the site.

LORD JOHNSTON : I may say that Lord Cullen has perused my opinion and agrees with it. I should add that Mr. Binnie ought to be furnished with a copy of mine and Lord Salvesen's opinions, and with the intimation that we recognise the difficulty of the case, and if he would like any further information that he should apply to us.

In pursuance of the foregoing remit, Mr. Binnie submitted the following written statement to the Court :—

My Lords,—In obedience to the instructions in the interlocutor above written, I have very carefully considered the opinions therein referred to, and now beg humbly to report—

In regard to contention (a) of the original appellant, I am of opinion—First : That as matter of fact the Commissioners of Inland Revenue did agree to accept £400 as the basis of the different values under the Act as stated in paragraph (2), this opinion being founded on the correspondence between the district valuer and the original appellant's solicitors. Second : That as matter of fact there had, on the hypothesis that the original site value was a fair one, been no increase in the value of the site between 30th April, 1909, and 8th June, 1911. But, for the reasons after given, I have come to the conclusion that the values in the provisional valuation are all too low.

In regard to contention (b) of the original appellant, I must explain that I had considerable difficulty in coming to a decision on this point. I should have liked to get from James Burns Walker personally a statement of the motives by which he was actuated in paying the consideration of £650 for the property ; but on the date when I inspected the property and heard parties on the appeal, viz., 28th June, 1912, Mr. Walker was, as I learned by inquiry at his house, very seriously ill, and in fact he died on 14th July, 1912. For this reason I was unable to

get from him any statement as to what was in his mind when he purchased the property, and so far as I could learn from the parties there was no other person to give me any information on this point. I have, therefore, had to form my conclusions on the matter as best I could. After full consideration, I am satisfied as matter of fact that in paying the purchase price of £650 James Burns Walker was actuated by some one or other of the considerations alleged in contention (b) of the original appellant. Further—I am of opinion that in law the facts warrant a deduction in respect of some such personal element from the purchase price, under Section 25 (4) (d) of the statute. Further—I consider, assuming such a deduction competent in law, that the sum of £180 should be allowed in respect thereof. For the reasons stated above I was not able to arrive directly at the sum just mentioned; I could only arrive at it by ascertaining to the best of my ability the market value of the subjects, and then taking the difference between this and the consideration on sale as necessarily the proportion of the consideration on sale given for the personal element, the figures of the calculation being :—

| | £ |
|---|-------------|
| Consideration on sale | 650 |
| Less market value of property at 8th June, 1911, estimated by me at | 470 |
| Leaving | <u>£180</u> |

as the proportion of the consideration on sale given
for the personal element.

If the Court should decide that the deduction claimed cannot competently be allowed under the statute, and that the purchase price of £650 must be accepted as the occasional total value without deduction in respect of any personal consideration, then, on that alternative hypothesis, I am of opinion that, of the said sum of £650, the sum of £552 represents the value of the buildings or other appurtenants to the site, and the sum of £98 represents the value of the site. Or to put this in another way :—

| | |
|--|-------------|
| Accepting the consideration on sale as the occasional total value | £ 650 |
| Whereas the total value in the provisional valuation was... | <u>400</u> |
| Shows a rise in value between 30th April, 1909, and 8th June, 1911, of | <u>£250</u> |
| Of this the amount attributable to a rise in the value of the buildings is £552, less £380, the amount allowed for buildings in the provisional valuation | £ 172 |
| And the amount attributable to a rise in the value of the site is £98, less £20, the original site value in the provisional valuation | 78 |
| | <u>£250</u> |

In regard to contention (a) of the Inland Revenue Commissioners, I,

as a layman, feel great diffidence in offering an opinion on a question of law. In response to the directions of the Court I have to state that, in my opinion, the Commissioners are wrong in contending that the words "the like deduction" are in every case synonymous with the words "the same deduction." I think that buildings, even where there has been no capital expenditure made upon them, may from various causes rise or fall in value between two given dates, just as every one knows as a fact that bare ground rises and falls in value. The contention of the Commissioners is that the deduction for the value of the buildings must, on the occasion, be the *same* as was allowed in the provisional valuation, namely, £380.

In regard to contention (b) of the Commissioners, I am of opinion that Section 12 of the statute does not render incompetent the deduction claimed for goodwill or other matter personal to James Burns Walker. And that for this reason: a deduction for matter personal to James Burns Walker, the purchaser of the property on 8th June, 1911, could obviously not have been claimed by the original appellant in the particulars which she was called upon to furnish to the Commissioners for the original valuation at 30th April, 1909. The only person who could claim such a deduction was James Burns Walker, and he could not claim it until he became owner of the subjects.

Following the directions of the statute I arrive at the following conclusion as to the assessable site value on the occasion of the sale to James Burns Walker.

| | £ | £ |
|--|-----|-----------|
| Consideration on sale... .. | | 650 |
| Deduct— | | |
| Under Section 25 (4) (a) "the same amount "as is to be deducted for the purpose of "arriving at full site value from gross "value" | 552 | |
| Under Section 25 (4) (b) (c) (e), no deductions were claimed by the original appellant, so I allow none... .. | nil | |
| | | <hr/> 552 |
| Result—Assessable site value | | <hr/> £98 |

At this point I may perhaps state how my estimate of £470 as the market value of the property at 8th June, 1911, was made up.

| | £ |
|--|-------|
| The rental of the property at that date was £38, and this I capitalised at $12\frac{1}{2}$ years' purchase | 475 |
| (which is the figure corresponding to gross value in the provisional valuation). | |
| Deducting the capitalised value of the feu-duty of 5s. at 20 years' purchase | 5 |
| | <hr/> |
| Gives as the market value | 470 |
| (corresponding to total value in the provisional valuation). | |

£

| | |
|--|-----|
| Deducting from this the difference between gross value and value of the fee simple of the land divested of buildings, trees, &c., which difference I estimate at ... | 400 |
| (as against £380 in the provisional valuation). | |

| | |
|---|-----|
| Leaves as the market value of the site | £70 |
|---|-----|

(this corresponding to assessable site value in the provisional valuation).

I do not think that, speaking generally, there has been any material alteration in the value of properties in Dalry between 30th April, 1909, and 8th June, 1911. If therefore the figures just given are accurate (and they are supported by transactions in the neighbourhood quoted to me by the valuers of the Inland Revenue), then it follows that the various values in the provisional valuation were underestimated. As will be seen from the correspondence between the original appellant's solicitors and the district valuer, the latter originally estimated the total value of the property as at 10th January, 1911—the date of John Walker's death—at £450, which very closely approximates to my estimate of its market value a few months later. In order, however, to meet the views of the original appellant's solicitors (*vide* correspondence), the district valuer reduced his estimate of the total value to £400, with the result that, in the provisional valuation, he brought out the full site value at £25. Now the site, which is in one of the main streets in Dalry, has an area of 0·062 acres or 300 square yards of nett building ground, with a frontage of 54 feet, so that the full site value of £25 is equal to 1s. 8d. per square yard. Such a price per square yard would fairly represent the value of ground devoted to small villas or cottages on the outskirts of a country town, but it seems to me far too low a price to apply to a site on a main street close to the centre of a town like Dalry. I am very reluctant to criticise a Government valuer, but I cannot help thinking that an error has crept into his calculations in this particular case. Of course the provisional valuation has now become final, but I must criticise it in order to make my own conclusions clear.

Finally I should, perhaps, explain how the findings which I gave in the stated case were arrived at.

My first or principal finding, fixing the site value on the occasion at £70, was my estimate of the market value of the site on the occasion.

My second finding, fixing the site value on the occasion at £20, needs no explanation.

My third finding, fixing the site value on the occasion at £70, was arrived at by taking the

| | | |
|---|-----|-----|
| Consideration on sale | £ | £ |
| And deducting for buildings | 400 | 650 |
| And for matter personal to James Burns Walker ... | 180 | |
| | — | 580 |
| Leaving as site value on the occasion | | £70 |

My last finding, fixing the site value on the occasion at £270, was arrived at by taking the

| | | | | | | |
|--|-----|-----|-----|-----|-----|-------------|
| | | | | | | £ |
| Consideration on sale ... | ... | ... | ... | ... | ... | 650 |
| And deducting for buildings the <i>same</i> amount as in the | | | | | | |
| provisional valuation ... | ... | ... | ... | ... | ... | 380 |
| Leaving as site value on the occasion | | ... | ... | ... | ... | <u>£270</u> |

I have the honour to be,

Your Lordships' most obedient servant,

THOMAS BINNIE, *Referee*.

Glasgow, 15th January, 1913.

The following authorities were referred to by counsel: *Attorney-General v. Jameson*, (1905), 2 I. R., 218, *per* Fitzgibbon, L.J., at p. 230; *Erskine's Trustees v. Crombie*, (1870), 9 M., 54; *Chandler's Wiltshire Brewery Company, Limited, v. London County Council*, (1903), 1 K. B., 569, at pp. 572, 573; *Bradford-on-Avon Assessment Committee v. White*, (1898), 2 Q. B., 630, at p. 638.

On 6th March, 1913, the Court (diss. Lord Cullen) *found* that the decision of the Referee was right in so far as it fixed the site value on the occasion of the transfer at £70.

LORD JOHNSTON: The present appeal is concerned with the proper amount to be assessed as the increment value duty under the Finance (1909-10) Act, 1910, on a small property in the main street of the burgh of Dalry, which brought £650 when sold in 1911 to the brother of the deceased owner. The original site value was fixed as at 30th April, 1909, at £20. The Commissioners value the site value, on the occasion of sale, viz., 9th June, 1911, at £270, and claim as the increment value duty one fifth of the difference between the £270 and the original site value of £20 or £50. An increase in the site value to the extent of twelve and a half times the original site value in two years in the site of a small property in a small country town must be admitted to be an extravagant result of the Act. But it is maintained by the Crown that it is an unavoidable result of the phraseology of the statute, whatever the intention may have been.

The statute, Section 2 (1), defines "increment value" as the amount by which the site value of any land, as ascertained in accordance with this section, *i.e.*, Section 2, on the occasion when increment value duty is to be collected, exceeds the original site value as ascertained in accordance with Section 25. The declared object of the Act was to tax what was properly described as the unearned increment of land, the increase in the value of bare land occasioned by circumstances beyond the owner's control and to which he had not contributed. The conception of that object imports the taxation of the difference between real value at two different times. In construing and applying a statute we cannot rely upon the declared object of its promoters, however much it may be common knowledge. But it is a consideration that cannot be ignored, that the general scope of this Act is in accordance with its promoters' declared object. And I do not think

that there is much doubt that the intention and expectation of the Legislature was so also.

On the other hand the Crown maintain that, whatever the object of the Act, the result of its provisions is to tax the difference between a real value and a mere statutory conception or fictitious value. It may be so, for the provisions of the Act are wrapped up in such a cloud of words that it is quite possible that they may, if literally read, achieve a result not dreamt of by those who framed the statute.

The important figures in the case, following the order of the Act of 1910, are these :—

| | £ |
|---|-----|
| (1) Original gross value as at 30th April, 1909 | 405 |
| (2) Original full site value | 25 |
| <hr/> | |
| Consequent difference between original gross and original full site value | 380 |
| Capitalised value of feu-duty | 5 |
| (3) Original total value | 400 |
| (4) Original site value | 20 |
| (5) And consideration for transfer on sale at 9th June, 1911 | 650 |

As admittedly there had been no expenditure between 1909 and 1911 on the property, the Inland Revenue Commissioners took the site value on the occasion of sale to be the consideration for sale, less the difference between original gross and original full site value, or £650—£380=£270. In this they are clearly wrong, and can only defend themselves by construing the word “like,” occurring at the end of Section 2 (2), as equivalent to “same.” I do not delay by examining this contention further, but merely say that, in my opinion, where the statute says “like” it means “like” and not “same.” But this only disposes of a fringe of the question at issue.

Another incidental point may similarly be dealt with at once.

John Walker, the owner, died on 10th January, 1911.

The property was sold by his widow to her husband's brother, James Burns Walker, on 9th June, 1911, at £650.

The provisional valuation was not served (on John Walker's widow) till after John Walker's death, and as it was not objected to it became final. But meantime the value of the property had been returned for estate duty at £400, and it is said that that value was accepted by the Inland Revenue district valuer on the understanding that it should form the basis of the different values under the Finance (1909-10) Act, 1910. That seems in a sense to have been the case. But its effect could only be to fix £400 as the value for the provisional and final original valuation as at 30th April, 1910, and for the increment duty accruing on John Walker's death on 10th January, 1911. And that effect it has received. It could not regulate the value for increment duty on the occasion of sale on 9th June, 1911, even if the valuer had been made aware of the transaction, which he denies. For he had no authority to accept it as such in the circumstances, and I am satisfied did not do so.

This contention of the widow may therefore be at once disposed of.

Mrs. Walker was dissatisfied with the assessment of the increment value by the Commissioners on occasion of the sale, and appealed. A reference was accordingly made under the statute to Mr. Thomas Binnie, who has reduced the occasional site value to £70 and consequently the increment value to £50, being £70—20. Against his award the Inland Revenue Commissioners have appealed to this Court.

The ground of Mrs. Walker's contention for reduction is thus stated by her, viz., that the consideration of £650 paid by James Burns Walker was not paid merely for the property as a marketable subject, and was indeed greatly in excess of the value of the property in open market at 9th June, 1911; that in paying this price James Burns Walker was actuated partly by sentiment, partly by consideration for his brother's widow and family, and partly by fear of disturbance. As regards the latter, it is the case that he was advanced in life, and actually died pending the reference, and that he had for a great number of years, as many as thirty, I think, occupied the premises, partly as his dwelling-house and partly as the shop in which he carried on his business of draper. And Mrs. Walker maintained that, on a sound construction of the Act, Section 25 (4) (d), a deduction fell to be made from the consideration on sale to James Burns Walker, in respect of goodwill or other matter personal to him as occupier.

This contention Mr. Binnie has sustained, and has accordingly reduced the occasional site value as above stated. The grounds on which Mr. Binnie had based his conclusion, and the data on which he had reached his figures, not being quite clear from the case as originally presented, we asked Mr. Binnie to supply us with further information. This we now have, and are enabled to dispose of the case.

The original values have been finally and irrevocably fixed under the statutory procedure. Mr. Binnie considered that they were considerably under the true value as at the statutory date. But he states this opinion, not as in any way seeking to disturb the *datum* level of values provided by the Act, but merely as explaining part of his own subsequent valuation.

It is necessary, then, to consider carefully the statutory method of arriving at occasional site value. The Act Section 2 (2) says that it shall be taken to be the value of the consideration for transfer on sale, that is, the purchase price, subject to the like deductions as are made under Section 25 (4) for the purpose of arriving at the original site value from the total value. Section 25 (4) enumerates these deductions, reading only those with which this case is concerned, thus:—

- “(a) The same amount as is to be deducted for the purpose of arriving
“at full site value from gross value”; and
- “(d) Any part of the total value which is proved to the Commis-
“sioners to be directly attributable . . . to goodwill or any
“other matter which is personal to the owner, occupier, or other
“person interested for the time being in the land.”

These two deductions must be taken separately.

The first deduction is, divesting the statutory provision of its circuity, simply the difference between gross value and full site value, or the difference between the hypothetical market value of the subject as it stands at

the time and the hypothetical market value of the bare site—that is, in popular language, its “prairie value.” This difference is really not so much the value of the buildings, &c., on the site *per se*, as the value added to the bare site by the buildings and other structures on, in, or under the surface, which are appurtenant to or used in connection with any such buildings, and of growing timber, &c.—that is, the value added to the bare building ground by man’s expenditure of money and labour. The statute, Section 25 (2), talks as if this is to be estimated as a deduction to be made from gross value to arrive at full site value, and Section 25 (4) (a) talks of it as the amount to be deducted for the purpose of arriving at full site value from gross value. But there is no reality in the definition. I defy any valuer to follow the theoretical lines laid down for him by the draughtsman. He must estimate the gross value and he must estimate the full site value, things which he is competent to estimate, and the difference is this deduction which he is not in a position to value otherwise than by deducting estimated full site value from estimated gross value, but which he is assumed to value in order to arrive at full site value. And the strange thing is that full site value is not wanted, and is of no use except for the purpose of ascertaining this deduction, which is a thing really wanted to be created for an ulterior purpose, viz., that of Section 25 (4) (a). Now the trouble in following the statutory direction of Section 25 (4) (a) is that gross value was necessarily ascertained under Section 25 (1), when arriving at original total value, from which original site value was deduced, but that, in the case of occasional values, the valuator is presented with total value directly, in the form of the consideration for the transfer on sale, and has not had to get at it by the process of ascertaining gross value. But if the letter of the statute is to be followed the valuer, having been presented with total value in the form of the purchase price, which is a real thing, must throw it over, and going back on the track, must estimate for himself (Section 25 (1)), according to the best of his opinion, the value of the fee simple of the land *if sold at the time in the open market by a willing seller in its then condition*, free from all burdens and restrictions, and then also estimate for himself (Section 25 (2)) the value of the divested land *if sold at the time in the open market by a willing seller*. How far he may use the purchase price as a guide or help in these estimates is entirely for himself. Mr. Binnie, following the letter of the statute, although, as he explains, there has been absolutely no change in any of the values between 1909 and 1911 for sufficient reasons which he explains, estimates gross value in 1911 at £475 as against £405 original, and full site value at £75 as against £25 original, and therefore the difference between them at £400 as against £380 original. And this last figure of £400 becomes the first, or (a) deduction of Section 25 (4) from the purchase price of £650. There remains £250. He next considers whether any deduction falls to be made under Section 25 (4) (d), whether there is ground for such in fact, and whether the deduction is competent in law. I think that the latter question should be first considered. Mr. Binnie holds, and in this I agree with him, that the facts alleged by Mrs. Walker warrant in law some deduction in respect of the personal element from the purchase price.

Any part of the purchase price which can be attributed to such considerations as have been advanced by the original owner's widow appears to me to be exactly what is intended to be covered by this branch of the subsection. I pass over the suggestion of the charitable intentions of Mr. James Burns Walker towards his brother's family as perhaps somewhat fanciful and intangible. But goodwill and the avoidance of disturbance, which is but another phase of goodwill viewed from a special standpoint, are neither fanciful nor intangible, and if part of the price is attributable to these considerations, it forms, in my opinion, a good deduction in terms of Section 25 (4) (d). It is part of the total value directly attributable, not to the site, but to a matter which is personal to the occupier. If, taking the figure of the sale in 1911, an apparent rise in site value, as compared with 1909, from £20 to £250, is established, where no such increase has occurred in reality, and if this apparent rise is attributable to a matter personal to the occupier, it results that if the increment value duty is to be calculated on such apparent increment the revenue is taking toll, not of an increment in site value, but of something quite different, which the statute never meant to be taxed. This deduction is therefore, I think, within, and properly within, the terms of the subsection.

If so, what part then, of the total value or purchase price, if any, is directly attributable to this matter? It has been contended, and I am aware that my brother Lord Cullen so holds, that there is neither proof that any such consideration entered into the purchase price, nor of the proportion to be attributed to it. Unfortunately we have here no direct proof, owing to the death of Mr. James Burns Walker pending the reference to Mr. Binnie. But we have circumstances, in the first place, in which such an additional price for goodwill, or avoidance of disturbance, was reasonably to be presumed, because the conditions precedent to it existed, and, in the second place, a substantial part of the price not accounted for, and so substantial, nearly 50 per cent. above Mr. Binnie's well-supported estimate of true value, that it cannot be attributed to mere difference of opinion between valuers, but has to be accounted for. Was Mr. Binnie bound to assume that Mr. James Burns Walker simply made a gross mistake in the value of the property which he had so long occupied, or was hopelessly ill advised, when Mr. Binnie had before him the tangible fact of Mr. James Burns Walker's double occupation of the subjects, both as a residence and as a place of business? Mr. Binnie states that he was, after full consideration, satisfied that as matter of fact in paying the purchase price of £650 James Burns Walker was actuated by some one or other of the considerations alleged by the original appellant. I am not prepared to disagree with him, for I think that the inference was one of fact which he was entitled to make, and which I should have made myself had I been in his position. So much in the application of the provisions of this Act is committed to the opinion and discretion of valuer and referee, that I do not think that this Court is justified in calling on them to show that they had absolute legal proof, which would satisfy a court of law, of every consideration on which they proceeded.

In the next place I think that it was quite competent for Mr. Binnie, if he was satisfied that such reason for the excessive price existed, and had no proof of the precise amount actually attributed to it by the purchaser, to put his own value upon it. His function under the Act is to put values on things according to his own judgment. Nay, I would say that, even if he had had such proof, he was equally bound to put his own value upon it. Neither the evidence of the purchaser that he did put a definite amount, nor the express attribution of a portion of the price in the contract of sale or conveyance, would have precluded the Inland Revenue from requiring Mr. Binnie to apply his mind to the real amount or value of the consideration.

I think, therefore, that Mr. Binnie has properly disposed of this case by proceeding to put a value on the consideration in question in the best way he could. I do not think that it was necessary for him to disclose the mental process which he went through in arriving at his figures. But he has done so, and I cannot find fault with it. He says: "I consider, assuming such a deduction competent in law, that the sum of £180 should be allowed in respect thereof. For the reasons stated above, I was not able to arrive directly at the sum just mentioned; I could only arrive at it by ascertaining to the best of my ability the market value of the subjects, and then taking the difference between this and the consideration on sale as necessarily the proportion of the consideration on sale given for the personal element, the figures of the calculation being—

| | | | | | | | |
|--|-----|-----|-----|-----|-----|-----|-------------|
| | | | | | | | £ |
| " Consideration on sale | ... | ... | ... | ... | ... | ... | 650 |
| " Less market value of property at 8th June, 1911, | | | | | | | |
| " estimated by me at | ... | ... | ... | ... | ... | ... | 470 |
| " Leaving | ... | ... | ... | ... | ... | ... | <u>£180</u> |

" as the proportion of the consideration on sale given for the personal element."

I prefer this ground of judgment. But Mr. Binnie has suggested another, viz., that if he is not entitled to make any deduction for the alleged personal element, and is bound to hold that the whole sum of £650 must be attributed entirely to site and buildings, he must then consider whether the buildings as well as the site have not had their share in the appreciation. I am entirely with him in the view that increase or decrease in value cannot all be attributed to site. I can conceive of cases in which, viewed from the point of view of market value, the bare land, as building ground, may not have increased in value, and yet the subjects as a whole may have increased, and that even though in the interim nothing has been spent on the extension or improvement of the buildings. In fact, the demand which regulates market price may from time to time create any amount of permutation between the relative proportions attributable to land and to buildings. But where, as here, there has been an increase so extravagant that it is impossible to attribute it to the intrinsic increase in value of the combined subject in open market, I think that it would be an improper application of the Act empirically to proceed to divide the

increase between land and buildings which do not justify it, where there is, as here, another and satisfactory mode of accounting for it. In other circumstances the alternative course taken by Mr. Binnie might be necessary.

Mr. Binnie explains that his third finding fixing the site value on the occasion at £70 was arrived at by taking the

| | £ | £ |
|---|-------|-------|
| Consideration on sale | | 650 |
| And deducting for buildings | 400 | |
| And for matter personal to James Burns Walker ... | 180 | |
| | <hr/> | 580 |
| Leaving as site value on the occasion | | <hr/> |
| | | £70 |

I think, for the reasons above stated, that this finding was correct and should be affirmed, but I think that Mrs. Walker was entitled to the full expenses of her appeal to Mr. Binnie, and that she is entitled as respondent to her expenses in the case before this Court.

LORD SALVESEN. The question in this case relates to the increment value duty on a small property situated in Dalry. The material facts which are stated by the Referee are as follows: The late John Walker, the owner of the property, died on 10th January, 1911. The property consists of a piece of ground extending to about 300 square yards, with a frontage of 54 feet to New Street. On this site there is a house, the lower storey of which was occupied as a draper's shop, the occupier being Mr. James Burns Walker, a brother of the late owner. He had long occupied the shop in which he carried on his business, and resided in the upper floor of the building. He paid £38 annually of rent for his premises. The only burden on the property is a feu-duty of 5s.

On 6th March, 1911, the value of the property was returned for estate duty purposes by the appellant, as executrix of her husband, at £400, and on 9th August, 1911, that value was accepted by the Inland Revenue district valuer. A provisional valuation as at 30th April, 1909, under the Finance Act, 1910, was served upon the appellant on 30th August, 1911; and, as no appeal was entered, this provisional valuation has become final. The only material figures therein contained are: (1) £400, the original total value; and (2) £20, the original assessable site value, the difference representing the value of the buildings. The property had in the meantime been sold in June, 1911, to the occupier, Mr. James Burns Walker, for a sum of £650—no capital expenditure having been made upon the property during the period from 30th April, 1909, to 8th June, 1911. The Referee is of opinion that there has been no material alteration in the value of property in Dalry between these dates; but he thinks that the property was undervalued in the provisional valuation, and that it ought to have been valued at £470, £400 of which would be attributable to the buildings and £70 to the site. (As the capitalised value of the feu-duty remains constant in the calculations, I leave it, for the sake of simplicity, entirely out of count.) He was accordingly of opinion that the site had increased in value as compared with the provisional valuation by the sum of £50, and that increment

value duty was leviable upon this sum. The Commissioners of Inland Revenue, on the other hand, claim that the difference between the sum actually paid for the property, namely, £650, and the value of the buildings as fixed in the provisional valuation, £380, must be treated for the purposes of the Act as the value of the site; and that duty accordingly falls to be paid upon £270, less £20, the original site value.

Before disposing of the appeal we thought it necessary to obtain some further facts, and these have been stated by the Referee in an additional report. He holds that the difference between the price actually paid and his valuation of the market value of the subjects, namely, £180, must be attributed to considerations personal to the purchaser, in which case the increment value of the site would be the £50 arrived at by him. If, on the other hand, £650 is to be treated as the market value of the subjects, then he holds that the value of the buildings must be regarded as £552 and the site as £98: from which latter sum the original site value of £20 falls to be deducted, leaving the increment value of the site £78.

The controversy between the parties turns on the construction of Sections 2 and 25 of the Finance Act, 1910. The former section contains the leading provision, which is in these terms: "For the purposes of this part of this Act the increment value of any land shall be deemed to be the amount (if any) by which the site value of the land, on the occasion on which increment value duty is to be collected as ascertained in accordance with this section, exceeds the original site value of the land as ascertained in accordance with the general provisions of this part of this Act as to valuation." Accordingly, if the site value has remained constant or has diminished, no increment value duty would *prima facie* appear to be leviable. The same section goes on to provide: "(2) The site value of the land on the occasion on which increment value duty is to be collected shall be taken to be (a) where the occasion is a transfer on sale of the fee simple of the land the value of the consideration for the transfer."

There is also a provision (d) which may have a bearing on the construction of Section 25, to the effect that where the occasion is a periodical occasion on which the duty is to be calculated in respect of the fee simple of any land, the total value of the land on that occasion falls to be estimated in accordance with the general provisions as to valuation. There follows a qualification which is applicable to the whole of Subsection 2, and which is expressed in these terms: "Subject in each case to the like deductions as are made under the general provisions of this part of this Act as to valuation for the purpose of arriving at the site value of land from the total value."

On referring to Section 25, which contains the regulations as to valuation, one finds that the gross value of land is defined as the amount which the fee simple of the land, if sold at the time in the open market by a willing seller in its then condition, free from incumbrances, might be expected to realise. Similarly the full site value of the land is defined as meaning the amount which remains after deducting from the gross value of the land the difference between that value and the value which the fee simple of the land, if sold at the time in the open market, might be expected

to realise if the land were divested of any buildings and other structures ; and the total value of land is the gross value after deducting the capitalised value of any incumbrances. Subsection 4 proceeds to define the assessable site value, which in the case before us is defined as being the total value after deducting the value of buildings or other structures, as in Subsection 2, and “(d) Any part of the total value which is proved to the “ Commissioners to be directly attributable to . . . goodwill or any “ other matter which is personal to the owner, occupier, or other person “ interested for the time being in the land.”

These being the provisions which we have to construe, and which are necessarily complex in form, because of the infinite variety that must exist in the quality of heritable subjects, the problem here is to apply them to what is a comparatively simple case, always keeping in view the leading principle of the Act that the duty falls only to be levied on the increment of site value. Here we have property belonging in fee simple to the owner and having only two elements of value, namely, the value of the site and the value of the buildings upon it. This property was sold by a willing seller to a willing purchaser ; and *primâ facie* such a sale, whether the result of a private transaction or of a public roup, is the market value of the whole. To what extent that market value is contributed to by the value of the buildings must always be a matter of valuation ; and, if there be no other considerations entering into the price, the value which remains after deducting the value of the buildings represents the assessable site value. When that figure is compared with the assessable site value as ascertained by the provisional valuation, you ascertain whether there has been any increment in value and, if so, the amount of the increment. Here, however, the transaction is complicated by the fact that there were personal considerations which entered into the price paid by the purchaser. If the goodwill of the draper's business had belonged to the seller and had been included in the price, a deduction would require to be made of the value of such goodwill before it could be ascertained whether the value of the heritable subjects as a whole had been increased. The simplest case of all would have been if the parties had *bonâ fide* stated in the conveyance the sum at which they respectively agreed to sell and purchase the goodwill so far as that pertained to the heritage and was capable of being valued apart from it. We are familiar with cases of this kind in dealing with the sale of licensed premises, where it sometimes happens that the value of the heritable goodwill exceeds the value of the heritable subjects themselves treated as subjects to which no licence attaches. In the present case there were no elements of value belonging to the seller and conveyed by him ; but it is said that there were considerations which were personal to the purchaser as the occupier of the shop in the building. It was contended that the buyer, James Burns Walker, paid a sum in excess of the value of the subjects because of the affection which he entertained towards his brother's widow. Even if that could be ascertained as a matter of fact, I do not think that it would be a part of the total value which could be taken into account in fixing the assessable site value under Section 25 (4) (d). But it is scarcely the subject of legitimate conjecture, in a case where the facts

are not known, that the buyer took this method of making what was in effect a present to his brother's widow. The other element, however, is in a different position. It is said that the purchaser feared that if the subjects were acquired by an outsider he might be compelled to quit the premises in which he had for a long time carried on business as a draper. This is a matter which I think did have a commercial value for him; because in the first place he would have to face the cost of removal; and it might be that if a rival draper's business was established in his old premises, he might lose some of the business which depended on the fact that a business of a particular kind had been carried on there for many years. It was also an element which the seller might well have in view in demanding a higher price from the purchaser than she would have obtained from one who was merely buying the property as an investment. It was, however, in my opinion, a part of the total value which was personal to the occupier. It was not personal to the owner, because if the occupier had died this element of value would have disappeared. But it is not enough to say that such an element might enter into the price; it must be proved that it in fact did so. I think that is established by the valuation of the Referee of the subjects as heritable subjects at the sum of £170, which I presume is conclusive between the parties and is, in any event, well warranted according to the ordinary principles of valuation. As I read the Referee's findings, these include a comparison with neighbouring subjects similarly situated, as well as the application of an appropriate number of years' purchase to the actual rental paid by the tenant. Had that rental for any reason been less than the rental of similar subjects in the neighbourhood, a valuation based solely upon it would have been misleading. But the Referee expressly finds that the figures on which he proceeds were supported by transactions in the neighbourhood quoted to him by the valuers of the Inland Revenue. I think, accordingly, that the Referee's conclusion in fact that £180 of the price actually paid represented an element of value which was personal to the purchaser was legitimate, and that accordingly the site value on the occasion has been properly fixed at the sum of £70.

Even if this were not so—and we were obliged to take the case on the footing that there was no personal element which entered into the price—the result, in the view that I take, would not be substantially different. The consideration on sale would then represent the market value of the subjects as such. I entirely demur to the view contended for on behalf of the Inland Revenue, that on this assumption you are to deduct from the price exactly the same sum as was deducted in the provisional valuation in respect of the value of the buildings, where such buildings have not been added to or improved. The result, of course, would be that the site value would have appreciated on this method of valuation by £250 in the course of a few months, a figure more than eleven times greater than the valuation fixed by the provisional valuation, and that although the Referee was of opinion that there had been no actual appreciation, but that the site had been undervalued to the extent of £50 in the provisional valuation. This would be a result so divorced from actuality, and so utterly opposed to the leading provision of the Finance Act itself, that I should be very slow to

accept it. In the case where the subjects as a whole have been undervalued and their true value is ascertained on the occasion of a sale, I can see no principle upon which the whole increase of value is to be attributed to the site. Where both site and buildings have remained unchanged, as is found in the present case, the difference may be attributed either to an increase in the value of the buildings, which may quite well happen if the prices of material have in the meantime gone up, or to an increase in the value of the site, as where there has been a growing demand for land in the locality ; or partly to the one and partly to the other. Here the Referee holds that the difference is attributable to the extent of £172 to an undervaluation of the buildings, and to the extent of £78 to an undervaluation of the site. The latter sum would on this footing be the sum on which increment value duty falls to be calculated.

It is easy to figure cases in which the method for which the Inland Revenue contends in the present case would be disastrous to the Crown. Take, for instance, the case of a warehouse which at the date of a provisional valuation was well let and which had for years been unoccupied before the occasional site value came to be ascertained. I know of concrete cases where such property has become practically valueless, so far as the buildings are concerned, through the conditions of trade having entirely altered. When grain was carried in sailing vessels whose arrival was uncertain, provision had to be made for the requirements of the community by storing it in warehouses, for the use of which substantial rents were paid. Now that similar cargoes are conveyed in steamers the date of whose arrival can be fixed with almost mathematical precision, the necessity for storing grain has to a large extent disappeared, the buyers' requirements being periodically supplied by fresh arrivals of steamers. The result has been that many such warehouses have become practically unsaleable ; and instead of adding value to the site, perhaps diminish it by the necessity of removing the buildings in order to make way for new ones of a different type. It would be absurd in such a case to stereotype the value of the building at the time when the sale took place by reference to its value as fixed by a provisional valuation when it was a lettable and valuable commercial subject. An even stronger case would be where buildings had been allowed to become dilapidated and the whole value consisted in the value of the site. Where in such a case the price paid was largely in excess of the assessable site value as previously ascertained, but below the combined value of the site and buildings, there would be no increment value on which duty could be charged, although in fact the site had doubled or quadrupled in value. I cannot imagine the Legislature had this in view, nor do I see any warrant for the contention that the value of the buildings, assuming that they remained physically the same, is always to be treated as a fixed quantity ascertainable only by reference to the provisional valuation.

The only other point on which I desire to offer an opinion has reference to the view which I understand is held by one of your Lordships, that the gross value of a particular piece of land falls, under Section 25, to be ascertained by a valuer irrespective of the amount at which the land has actually been sold at the very time when the valuation falls to be made.

For my own part I see no warrant in Section 25 (1) for such a view. The language is, of course, general, because it applies to cases where there has been no actual transaction as well as to cases in which there has been a transaction. In the former case—as, for instance, when land continues to be held by a body corporate or unincorporate—the value can only be ascertained by means of a valuation; but when there has been an actual sale in the open market, there is no need and no justification for resorting to what is at best only an approximate method of ascertaining the value in the open market. I cannot appreciate the view that the price paid by the purchaser here may have been the price fixed by an unwilling seller and so in excess of the market value. There is no suggestion that the appellant was in any sense an unwilling seller; and, assuming that no personal considerations entered into the transaction, I cannot conceive that she got more than the market price of her property. If so, then Mr. Binnie's value is, that of that market price £552 represents the value of the buildings and £98 the value of the site divested of buildings. On questions of value the Referee is *primâ facie* conclusive; and it would be an odd result if we were required by the Act, in arriving at the assessable value of the site, to deduct from the gross value a figure as representing the value of the buildings which has been reached on the footing that the market value of the subjects was £180 less than the price actually paid by a willing purchaser to a willing seller. There may be anomalies in the Act; but I do not think that this is one which results from a fair construction of its provisions. I can conceive a case where, although the total amount actually realised for a piece of land covered with houses was less than the amount of the provisional valuation, increment duty would still be chargeable if, on a revaluation of the buildings, the valuator found that they had been overvalued in the provisional valuation, or had greatly depreciated in value; but even such a result would not be outwith the scope of the Act, as its leading enactment provides for a duty being levied upon any increment value of a site, and it is this alone with which the Act proposes to deal. But I could not be a party to a decision which would result in holding that when a Referee has fixed the value of the site at £70 on one method of calculation, and at £98 upon another, we should nevertheless be driven to the conclusion that its true value was £270 for the purposes of the Act. The fallacy which I humbly conceive underlies this view consists in assuming that the value in the open market of the fee simple of land falls to be ascertained, not by reference to the market price actually obtained, but by some calculation as to what it would fetch if it were exposed for sale. When reliance is placed on Mr. Binnie's valuation of the buildings on this property at the sum of £400, it must be kept in view that he reached this on the footing that some considerations personal to the occupier entered into the price, whereas if this assumption were erroneous, he valued the buildings at £552.

I have therefore reached the conclusion that the Referee was right in holding that the increment value duty leviable on the respondent falls to be calculated on the sum of £50; or, in the event of its being held that no part of the total value was attributable to a matter personal to the occupier of the subjects, on the sum of £78.

LORD CULLEN: The property in question in this case was the subject of valuation in terms of Section 26 of the Finance (1909-10) Act, 1910. The "total value" as at 30th April, 1909, was fixed at £400, and the "assessable site value" at £20.

In June, 1911, the property was sold by the respondent, Mrs. Walker, to her brother-in-law, James B. Walker, for £650. James B. Walker was the tenant of the premises, which consisted of a dwelling-house and shop.

The Crown now claim increment value duty on the occasion of this transfer on sale, and the question at issue relates to the mode of calculating the site value on the occasion under the provisions of the statute.

The subject of the duty is denominated (Section 1) "the increment value of any land," and increment value is to be deemed to be "the amount (if any) by which the site value of the land, on the occasion on which increment value duty is to be collected as ascertained in accordance with this section, exceeds the original site value of the land as ascertained in accordance with the general provisions of this part of this Act as to valuation."

In ascertaining the site value on an occasion where the occasion is a transfer on sale, the statutory calculation begins (and it may also end) with the price paid. Section 2 (2) (a) of the statute enacts that, on the occasion of a transfer on sale, the site value of the land "shall be taken to be . . . the value of the consideration for the transfer," subject to "the like deductions as are made under the general provisions of this part of this Act as to valuation, for the purpose of arriving at the site value of land from the total value."

Starting, then, with the price here paid—£650—one proceeds to consider what are the allowable deductions from it.

There is an allowable deduction under Section 25 (4) (a). It consists of "the same amount as is to be deducted for the purpose of arriving at full site value from gross value." Before the Referee it was contended for the Crown that in estimating this deduction it fell to be taken at the same figure as in the original valuation at 30th April, 1909. The Crown did not pursue this contention at the hearing before us, and it appears to me to have been unsound. Section 2 allows "the like deductions." And in the interval between 30th April, 1909, and an "occasion" which gives rise to a claim for increment value duty, the respective values may have changed.

In order to give effect to the deduction in question it is necessary to fix, as at the period of the occasion, the "gross value" and the "full site value." The difference between these forms the amount of the deduction. Gross value and full site value are respectively the subject of definition in Section 25 (1) and (2). Both definitions hinge on value in open market as on a sale by a willing seller. Now this standard of value is not necessarily represented by any price which is paid. A price paid may be anything. It may, on the one hand, be a nominal price or a price short of open market value to any extent. It may, on the other hand, be in excess of open market value, as where an owner, instead of becoming a willing seller in open market, makes himself an unwilling seller and obtains from a particular offerer a *pretium affectionis*.

Hence for the purpose of estimating, in accordance with their definitions, gross value and full site value, as on the occasion of a transfer on sale, the price paid does not necessarily afford a test of open market value. It may correspond with that value or it may not. A valuer will take account of the price paid; but he may legitimately hold that the open market value is a different amount.

In the present case the Referee, applying the statutory definitions, says: "I am of opinion that at 8th June, 1911, the date of the occasion above mentioned, the fee simple of the property, if sold in the open market by a willing seller in its then condition, free from incumbrances, and from any burden, charge, or restriction (other than rates or taxes), might have been expected to realise £475." This is his determination of gross value as on the occasion of the sale in question. The Referee then goes on to determine the full site value, which he states at £75. The difference between the gross value and the full site value as so determined is £400.

There are no materials before us on which, in my opinion, we can hold the Referee's said determination of gross value and full site value as on the occasion in question to be wrong. The price paid was £650. But, as I have said, a price paid is not necessarily a test of open market value. The Referee holds that the price of £650 was in excess of such open market value, and in this the respondent agrees.

It would seem to follow, therefore, that the amount of the allowable deduction under Section 25 (4) (a) of the statute is £400. If this sum be deducted from the price of £650 there is left £250 as being, so far as the calculation has gone, the site value on the occasion. And on a comparison of this figure with the original assessable site value—£20—there is brought out an increment value, for the purposes of the statute, amounting to £230. This is the sum on which the Crown now claims increment value duty.

If the above calculation is in accordance with the statute, and if no further deductions fall to be made, it is clear that, to a large extent, the increment value brought out does not represent an increase in actual site value, but represents the excess of the price paid over the open market value of the property. And it is urged that as increment value, under its definition in Section 2, is to be ascertained by comparing two "site values," such a result must be contrary to the intendment of the statute. This criticism proceeds on the assumption that the "site values" so to be compared are both actual site values. They are, however, statutory values, artificial in their definition, and it may be that the application of the statutory definitions will, in some cases at least, bring out results which are also artificial under the denomination of increased site values. Occasional site value here in question is, under Section 2, a value which is to be "ascertained in accordance with this section." And a consideration of how the section would apply to other and simpler cases which may be figured will, I think, show that the statutory increment value may be something which does not at all correspond with increase of actual site value. Let me suppose the case of a bare site subject to no incumbrances, burdens, or restrictions. In such a case the gross value, full site value, total value, and original assessable site value

would all be the same, to wit, the value of the land if sold in the open market by a willing seller. And let it be supposed that this value was £100, and that the original assessable site value was entered up at that figure. If thereafter the open market value of the site rose to £150, and the owner then sold it for £100, say to his son, there would be no increment value bearing duty, notwithstanding that there had been an increase of the actual site value. For in the case of a sale the statutory occasional site value can never be greater than the amount of the price paid (Section 2). Suppose, again, that the same site remained stationary in point of open market value at £100, but that the owner, by making himself an unwilling seller on private bargain, was fortunate enough to sell the land to someone who, for reasons peculiar to himself, paid a *pretium affectionis*, say, £150. As there would be no room for any deductions, this price of £150 would, under Section 2, be the site value on the occasion, and there would result an increment value subject to duty, although, *ex hypothesi*, there had been no increase of actual site value.

The conclusion, therefore, seems to me to be unavoidable that, while the tax created by the statute might have been one to be levied only on increase of actual site value, it is a tax leviable on an "increment value" which may or may not correspond with increase of actual site value, and which, in cases like the present, will include what may be described as the windfall to an owner, arising from his having been fortunate enough to sell his property for a price which exceeds its open market value as on a sale by a willing seller.

Another view, however, has been suggested as to the mode of calculating the allowable deduction under Section 25 (4) (a) on the occasion of a transfer on sale such as the present. As I understand it, the definition of gross value in Section 25 (1)—which hinges on open market value—is to be discarded, and gross value is to be constructed from the price paid, whatever may be its relation to open market value. The foundation of this view is the provision in Section 2 that the deductions subtractable from the price are to be the like deductions as would have been subtractable from total value had the calculation been one for arriving at original assessable site value from total value; from which provision the true inference is said to be that the price is not merely stated as the amount from which such deductions may be taken, but is stamped with the statutory character of total value of the property on the occasion. And so taking the price, whatever it may be, as the statutory total value on the occasion, a corresponding gross value on the occasion is to be constructed from it (according to a process which does not figure in the statute) by adding to the price the value of any incumbrances, fixed charges, or restrictions subject to which the property has been sold at that price. I can see no warrant in the statute for this view. The statute does not say, or, to my mind, imply, that any price which may be paid is to be held to be the total value of the property on the occasion according to its definition of total value. What it says is that the price paid is to be primarily deemed to be the site value on the occasion, but that there may be subtracted from it, in reaching the increment value subject to duty, the like deductions, if any, as would have been subtractable from total value if the process of calculation had been one for reaching original

assessable site value from total value. If the view under consideration is followed out in figures, it will be seen that, while the price is formally introduced into the calculation proposed, it is allowed no influence on the resulting increment value, and that the calculation is one of no utility. It may be superfluous to present the calculation in figures. But let me state it. The Referee here estimates the full site value on the occasion at £75, and, deducting £5 as the capitalised value of the fixed charge of feu-duty, he estimates the actual open market value of the burdened site on the occasion at £70. These values he reaches by direct estimate. The price paid was £650. Gross value, according to the Referee's determination and following its statutory definition, is £475. This figure, however, is to be discarded, and there is to be substituted for it a gross value constructed on the basis of the price, conceived as total value on the occasion. This is to be done by adding to the price the capitalised value of the fixed charge of feu-duty, thus making gross value £655. As full site value has already been determined to be £75, the difference between it and the said gross value is £580. This sum, therefore, is the amount of the allowable deduction from the price of £650 under Section 25 (4) (a). And on so deducting it there remains £70, which is just the Referee's already determined estimate of the actual open market value of the burdened site on the occasion. Thus the introduction of the price into the calculation has no influence on the result, and the calculation so based on it is meaningless.

I can see no warrant in the statute for the view that gross value, on any occasion when it falls to be estimated for the purpose of ascertaining increment value, is to be estimated otherwise than in accordance with its statutory definition. The definition is based on the value of the property if sold in open market by a willing seller; and a price paid in any particular case may differ indefinitely from this standard of value.

The matter, however, does not rest here, for the respondent claims a further deduction under the provision contained in the last part of Sub-section (4) (d) of Section 25. This provision permits of a deduction of "any part of the total value which is proved . . . to be 'directly attributable to . . . goodwill, or any other matter which is personal to the owner, occupier, or other person interested for the time being in the land.'"

"Total value" is a value strictly appropriate (by definition) to the land as a real subject. Logically, therefore, there is no room for a deduction from it in respect of personal matters. But the deduction is made applicable, *inter alia*, to the case of fixing the site value on the occasion of a transfer on sale, and under Section 2 the occasional site value is to be taken primarily to be the consideration paid for the transfer. Now a consideration paid for such a transfer may be a mixed one,—it may be given in respect of the transfer of the land and of something else. In such a case there may be room for splitting up the consideration so as to eliminate from it in the calculation of the claim for duty any part of the price which is not paid for the land, to which alone the increment value duty relates. The statutory definition of what may be thus eliminated (reading "price" for "total value") is "any part of the price which is proved to be directly attributable to goodwill, or any other matter which

" is personal to the owner, occupier, or other person interested for the time being in the land."

The respondent's contention raises, in the first instance, a question of fact. She alleges that the price of £650 paid by James B. Walker was " greatly in excess of its value in the open market at 8th June, 1911 "; and, further, that " in paying that price he was actuated partly by sentiment, partly by family affection towards his brother's widow, and partly by a dread that, if the subjects were acquired by an outsider, he might be compelled to quit the premises he had long occupied in the property, namely, his shop in which he carried on business as a draper, and his dwelling-house."

The respondent does not here say what part of the price she assigns to the mixed personal motives ascribed by her to the purchaser. The Referee did not make any pronouncement on the fact in the original case. But in his " further statement " he says that, in his opinion, the price of £650 was, to the extent of £180, paid by James B. Walker from the mixed personal motives ascribed to him by the respondent. In my opinion the Referee had no sufficient ground for coming to this conclusion in fact. He says that he was unable to get any statement from James B. Walker on the subject, and that he found that there was no one else from whom he could get any information. And in these circumstances he simply compares the price of £650 with his open market value of £470, and assumes that James B. Walker must have paid the difference of £180 from such motives as the respondent ascribes to him. This appears to me to be an unwarrantable inference in fact. There is no room for more than mere conjecture on the subject. The only ascertained fact is that Mr. Walker paid for the transfer of the property a price of £650, which *ex concessu* exceeded its open market value by £180.

But *esto* that it is to be taken as matter of fact that James B. Walker paid £180 of his price of £650 under the influence of the mixed motives ascribed to him by the respondent and by the Referee, there remains the question of law, whether this fact gives room for a deduction under the provision contained in the last part of Subsection (4) (d) of Section 25 already quoted. The provision is elastic in expression. It provides, in this connection, for a price paid being split up, and for the elimination from it of any part of it which is proved to be directly attributable to goodwill or any other matter which is personal to the owner, &c. On a construction of the provision it appears to me to refer to cases where a buyer pays a lump price, in consideration of which he obtains a transfer of the land and also a transfer or surrender of something else of a personal character to which some ascertainable part of his lump price is " directly attributable " as not being paid for the land. And I am unable to bring into this category any part of the price of £650 in the present case which may have been paid for the land by James B. Walker from a sentiment of benevolence on his part towards the respondent or from a fear of losing his occupancy of the premises if he did not buy them.

I am therefore of opinion that the claim of the Crown for increment value duty on the sum of £230 is well founded.

[HOUSE OF LORDS.]

INLAND REVENUE COMMISSIONERS *v.* HERBERT AND
OTHERS.

[MAY 2ND, 1913.]

*Revenue—Increment Value Duty—Assessable Site Value—“ Minus ”
Value.*

Under Section 25, Subsection 4, of the Finance (1909-10) Act, 1910, the “ assessable site value ” of land may be a *minus* quantity.

Decision of the Court of Session ([1912] S.C., 948 ; 49 Sc. L.R., 699) reversed.

This was an appeal by the Commissioners of Inland Revenue against an interlocutor of the Court of Session, named for the purposes of hearing appeals under the Valuation of Lands (Scotland) Acts, on a case stated, by way of appeal, from a Referee under the Finance (1909-10) Act, 1910. The case is reported [1912] S.C., 948 ; 49 Sc. L.R., 699.

The Lord Chancellor, in the course of his judgment, said:—The question which comes before the House for determination in this appeal is one of an entirely novel character. It is whether, in making the valuation of the site value of land required to be made by the provisions of the Finance Act of 1910, for the purposes of the new Land Taxes which the Act imposes, the original assessable site value which has to be ascertained may be shown as a *minus* quantity. The argument for the Crown, which was appellant, is in substance that while it is admitted that the site value which is the subject of these taxes must always be a real element in the actual value of the land, the statutory calculations in which that real element appears may, with a view to the measurement of its subsequent increase, have to express it in an appropriate valuation account, under the guise of a *minus* figure, just as might be the case in measuring with a Centigrade thermometer the rise from a temperature below the freezing point. It is therefore said that while this mode of measurement appears artificial, and may present the original site value under the form of a negative quantity, it is not really different from the procedure of a surveyor who measures the difference between quantities below and above a datum line, arbitrarily selected for convenience in reckoning and that it is a way occasioning no injustice of ascertaining a factor required for the measurement of the actual and positive value which is to be the subject of taxation.

By the respondents, on the other hand, it is contended that, reading the statute as a whole, it appears that what is called in it original assessable site value must always, if it exists at all, be shown as an actual and positive amount. And it was pointed out that in one case, at all events, the statute in terms directs a reduction to be made of 10 per cent. of the site value, a reduction which would be nugatory and impossible if that value could be shown as a *minus* amount.

His Lordship, having mentioned the duties leviable under the Finance Act of 1910, continued : The duty of a Court of Law is simply to take the statute it has to construe as it stands, and to construe its words according

to their natural significance. While reference may be made to the state of the law, and the material facts and events with which it is apparent that Parliament was dealing, it is not admissible to speculate on the probable opinions and motives of those who framed the legislation, excepting in so far as these appear from the language of the statute. That language must, indeed, be read as a whole. If the clearly expressed scheme of the Act requires it, particular expressions may have to be read in a sense which would not be the natural one if they could be taken by themselves. But subject to this the words used must be given their natural meaning, unless to do so would lead to a result which is so absurd that it cannot be supposed, in the absence of expressions which are wholly unambiguous, to have been contemplated.

After referring to the definitions in the Finance Act, 1910, and the directions therein as to the ascertainment of values, his Lordship continued :—

It is obvious that the aggregate amount of these deductions may exceed the total value as the Act defines it. The value of the buildings and other structures and of the trees on the land may be great in proportion to the total value, and so may the amount of the expenditure which is directed to be allowed for. The result may easily be that the person making the calculation will have, after ascertaining this aggregate amount, to bring out the balance of assessable site value as a *minus* quantity. On this the language of Section 25 appears to me to be imperative and quite clear, and to afford no room for uncertainty.

And when I look back to Section 2, which deals with increment value, it seems to me that this conclusion leads to no difficulty. For the increment value directed to be taxed is, as I have already pointed out, simply the difference between present and past site value, and this difference is as real and easily measured when one of the quantities is *minus* as when both are *plus*. Julius Cæsar was born in 100 B.C. and died in 44 B.C. The period of his lifetime is not on that account less real nor does the circumstance that it commenced before the Christian era, in a time the lapse of which is consequently reckoned by *minus* numbers, make the aggregate of years between then and the present time the less real. The temperatures below the freezing point, which is indicated by zero on the Centigrade thermometer are shown as *minus* figures, but a rise in such temperatures is not the less actual because it is measured negatively.

And so in the case of increment duty, the duty in relation to which the valuation called in question in the controversy before us becomes of practical importance, there is no difficulty. The growth in value which is marked out for taxation is not rendered the less real because of the method prescribed for its measurement. What the Act appears to contemplate is that the actual growth is to be taxed, and it lays down how the amount of this growth is to be expressed. If, as has been argued, it is wrong to enter a *minus* amount in the balance sheet which the valuer has to make out, the consequence must be that, notwithstanding that there has been an actual increase, measured by the difference between a *minus* figure and nothing, the starting point of this increase must be struck out, and the original site value entered in all cases as nothing.

Such a result would lead to great injustice. Suppose two houses side

by side in a street where the site values were exactly the same originally, and had increased equally, and that in the case of one of them a lump sum price had been paid so that there was a small feu-duty, or none at all, while in that of the other the feu-duty was substantial. The assessable site value might appear as a *minus* quantity in the latter case, and as a positive quantity in the other. This would make no difference in the estimation of increment duty as chargeable on a rise in site value which was actually equal in both cases. But if in the latter case the original site value were entered as nothing, the result would be that the increase in the site value of the second house would be made to appear as less than in the case of the first, simply because there was a substantial feu-duty. And yet there was really no difference between the two cases excepting in the mere form in which the price was paid for the site and the building upon it. The seller gets his lump sum price, or an equivalent feu-duty in the second case, secured over both site and building. In either alternative his title is to a fixed sum and to nothing more. The buyer, on the other hand, gets his site and building, and an exclusive title to any rise in the value of either.

My Lords, it appears to me that the Act of Parliament is definite in its directions, and that its scheme is not ambiguous. It was pointed out by Mr. Clyde in the able argument which he addressed to us on its construction, that Subsection (5) of Section 3 does not, if read literally, harmonise with the interpretation I have put on the rest of Part I. For it directs that on the first occasion of the collection of increment value duty the increment value is to be deemed to be reduced by an amount equal to 10 per cent. of the original site value, which must therefore have been contemplated by the draftsman as being a positive quantity. That is true if the words are read literally and without reference to the context. But an isolated expression of this kind cannot alter the plain scheme and principle of the whole of the valuation sections, and I think the subsection in question becomes harmonious and intelligible if original site value is read in this particular case as meaning, not the artificially expressed figure to which the last paragraph of the general definition in Section 25 (4) refers, but original site value in the sense of what remains after deducting from the amount of the site value at the time of collection the amount which represents the increase since the original valuation of what at that time, however described in the valuer's balance sheet, must have been contemplated by those who framed the statute as, taken by itself, an actual and therefore positive element in the value of the entire property. A similar observation may be made about Section 17 (1) which prescribes that undeveloped land duty is not to be charged in respect of any land where the site value of the land does not exceed £50 per acre. From the nature of the case and the very definition of undeveloped land questions which may arise in the case of increment duty are excluded, and it was not necessary to provide for them.

As soon as it is realised that the deductions, which have to be made in order to state the amount which the Statute prescribes, have to be made equally when ascertaining present site value and when ascertaining original site value for the purposes of increment duty the obscurity disappears. That these deductions have to be made in both cases is plain

from the concluding words of Section 2 (2) which gives directions to that effect. Those who framed the Act have adopted a method of working out the account which appears artificial, but which when examined carefully turns out to be necessary if the injustice is to be avoided which a different procedure would bring about in such instances as that of the two adjacent houses to which I have referred. The true view appears to me to be that the intention is to levy the tax only on an actual increase of value, and that it is merely in order to measure this increase that an arithmetical method is used in which *minus* numbers may appear among other figures.

My Lords, having arrived at these conclusions as to the meaning of the valuation provisions of Part I, I now come to their bearing on the appeal before this House.

The appeal is brought against two interlocutors of the Judges of the Court of Sessions named for the purpose of hearing appeals under the Valuation of Lands (Scotland) Acts. By the first of these interlocutors the learned judges overruled the decision of a Referee appointed under the Finance Act of 1910, by which decision the Referees had entered the original assessable site value of certain property vested in the respondents as trustees of George Herbert, deceased; and being Nos. 57 to 69, Westend Park Street, in the city of Glasgow, as *minus* £545. The second of the interlocutors under appeal was consequential, and was a decree against the appellants for costs.

The Referee decided that the original assessable site value was the *minus* sum I have mentioned, but he went on to say, in the case which he stated, that if it should be held by a court of law that such a *minus* value was illegal under the Finance Act, 1910, he alternatively determined that the original assessable site value was nothing, and that in the event of his first alternative finding being upheld there were to be no expenses, while if the second alternative was upheld the respondents were entitled to expenses. The only controverted question related to the site value, and as to this the Referee found as follows :—

| | | | | | |
|--|-----|-----|-----|-----|---------|
| Gross (original) value | ... | ... | ... | ... | £ 4,828 |
| Deductions from gross value :—Difference between gross value and value of the fee simple of the land divested of buildings, trees, &c. | ... | ... | ... | ... | 4,320 |
| Feu-duty, ground annual, or tack-duty | ... | ... | ... | ... | 1,053 |
| Original full site value | ... | ... | ... | ... | 508 |
| Original total value | ... | ... | ... | ... | 3,775 |

He went on in the case to state that it seemed to him that his duty under the Act was clear. By Section 25 (4) the assessable site value meant, he thought, the total value after deducting the same amount as was to be deducted for the purpose of arriving at full site value from gross value. Applying these figures, the result he reached was this :—

| | | | | | |
|--|-----|-----|-----|-----|--------------|
| Original total value | ... | ... | ... | ... | £ 3,775 |
| Deduct amount to be deducted for the purpose of arriving at full site value from gross value | ... | ... | ... | ... | 4,320 |
| Original assessable site value = <i>minus</i> | ... | ... | ... | ... | <u>£ 545</u> |

The Court of Session held that, reading the Act as a whole, an assessable value could not be a *minus* quantity, and on this ground they overruled the decision of the Referee and gave judgment to the effect that the value in question must be entered as nothing. They seem to have been impressed with the idea that upon the principle adopted by the Referee the owner of the site held it under burdens which prevented him from getting any benefit from it until it had appreciated to a positive quantity, and that until then the appreciation accrued for the benefit of the holder of the feu-duty or other fixed charge. The answer to this is that what will be taxed when increment duty is levied will be, not the original site value but the increase in site value, an increase which must always accrue for the benefit of the fiar, and can never increase the amount of the feu-duty or other fixed charge. The fallacy in the judgments of the learned judges appears to me to be that they took original site value, which is nothing but a formula for measuring a real element of increase in value, as intended to be by itself a definition of an assessable value. With all deference to the learned judges, I think they have misconceived the machinery of the statute, and that the Referee, whose decision they disturbed, was right in the conclusion he came to.

For these reasons I move, my Lords, that the two interlocutors of the Court of Session be recalled, and that it be declared that the first or principal decision of the Referee was right.

Lord Atkinson read a judgment to the same effect.

Lord Shaw, in the course of his judgment, said that the appeal was regarded as of importance because it was said to affect not only a principle upon which the entries with regard to land values were to be made by the officers charged with that duty under the Finance Act, 1910, but also on account of the large number of values throughout the kingdom which the principle affected. Importance in various passages of the judgments of the Court below was rightly attached to the objects of the statute. To all intents and purposes this was a statutory requirement for the formation of a Domesday Book, and the object could not be accomplished unless all land in the United Kingdom was included in that book. The two items which must appear with regard to every piece of land under separate occupation were the total value and the site value respectively of the land. With regard to each and all of these terms the statute explained, and, in his opinion, clearly and sufficiently explained their meaning. For the reasons given in his judgment, his Lordship entertained no doubt that the valuation and its entry of the *minus* value of £545 were properly arrived at and were correct. He did not find the statute anywhere to prescribe, with regard to the making of this valuation, that the datum from which increment was reckoned was to be positive. If it were—the materials for the calculation being what they were—the result would be to render void to all intents and purposes large portions of the Domesday Book, or rather to describe the entries as *nil*, which was not a statement, but a misstatement of the truth. The Act of Parliament, if accepted according to the rules which it itself set down, might so far as applicable to the question argued before this House, be very easily worked, its rules being so clear and the completeness of the valuation be unchecked. He humbly agreed to the course proposed from the Woolsack.

Lord Moulton read a judgment also concurring in the appeal being allowed.

After discussion, the Lord Chancellor said that their Lordships were of opinion that in this case it would be proper to make no order as to the costs of the appeal to the House.—[29 T. L. R., p. 502.]

[IN THE COURT OF APPEAL.]

DUKE OF BEAUFORT *v.* THE COMMISSIONERS OF INLAND REVENUE.

MARQUESS OF ANGLESEY *v.* THE SAME.

[MAY 7TH, 1913.]

Mineral Rights Duty—Arrears of Rent—Super Tax.

JUDGMENT.

Lord Justice Buckley said that he took first the question raised by the appeal of the Commissioners of Inland Revenue in Lord Anglesey's case, viz., the question as to the meaning of "rent paid" in Section 20 (2) (a) of the Finance Act, 1910.

If there were to be found in the Income Tax Acts any provision rendering the lessor debtor to the Crown, he would be of opinion that the Crown was right. It was because there was no such provision that he thought the Crown was wrong. He continued:—The question for decision arises thus:—

Under Section 20 (1) of the Finance Act, 1910, mineral rights duty is charged on the rental value, and by Section 20 (2) (a) the rental value is to be taken to be the amount of rent paid. If there be a lease at £150 a year and the tenant pays property tax and deducts, as he is entitled to do, the amount from his rent, is the rent paid £150 or is it the differential sum? Quite shortly stated the result of the Act, in my opinion, is this. There is a contractual obligation to pay £150 a year, but there intervenes a statute which creates in the tenant a Crown debt, and provides that he shall be entitled to pay not £150 a year, but the difference between the £150 and the amount of that Crown debt. That differential sum is the amount of rent paid.

In the case of mines of coal, included as they are within Schedule A, No. III., Rule 2, of the Income Tax Act, 1842, the duty is chargeable on the persons carrying on the concern, and such persons are entitled to make deduction of the duty so charged before making payment to the persons entitled to the profits.

After further referring to the payment of the duty, his Lordship continued:—

The person so paying the property tax who omits to deduct it from

his next payment of rent has no right to deduct it subsequently. Thus plainly it is not a sum which he can say he paid for and on behalf of his lessor. If he has paid the whole rent without deduction he has paid it voluntarily and cannot recover it (*Denby v. Moore*, 1 Barnewall and Alderson, 123; *Cumming v. Bedborough*, 15 Meeson and Welsby, 438). It results that the tenant has not paid a debt of the lessor; he has paid his own Crown debt, and by virtue of the statute he is entitled to deduct the amount of that debt from the contractual rent, which otherwise he would have had to pay. It results that the rent paid is the difference.

Attention has been called to several sections, of which I will take Section 163 of the Act of 1842 as an example. It speaks of such a person as the lessor as a person charged or chargeable to duty by way of deduction, and expresses that he shall in certain cases be entitled to be "repaid the amount of all deductions." It is argued that he cannot be repaid that which he has not paid, and that this shows that the payment by the tenant was a payment on behalf of the lessor. The argument, in my judgment, is not sound. The person spoken of as chargeable by way of deduction is a person who is not chargeable to the revenue by way of obligation. He is a person who, by way of deduction, is made to bear the debt; but he never has to pay the debt, and the word "repaid" means no more than reimbursed.

Having considered the word "repaid" and other points, his Lordship said: It results that, in my judgment, the rent paid in this case is not the contractual rent, but the difference between the contractual rent or so much of it as the tenant affects to pay and the property tax which the tenant has deducted.

It follows that the appeal of the Crown in Lord Anglesey's case must be dismissed.

I take, secondly, the question whether the super tax is to be deducted in order to arrive at the sum chargeable under Section 20. Super tax is an additional income tax chargeable under Section 66 of the Finance Act, 1910. It is payable, not by the tenant, but by the recipient of the income. The amount upon which super tax is to be charged is to be determined by ascertaining what is the income of the lessor from all sources. His income from this source, namely, the mineral rights, is (upon the footing of that which has preceded) not the total amount of the rent, but the difference between the contractual rent and the property tax in respect of the rent. In the case with which we have to do that amount is £356 5s. That sum, with other income of the lessor, will be aggregated, and upon the excess of the aggregate over £3,000 the additional duty of super tax is charged. There is no ground in this case for making any deduction from the £356 5s. of the amount of the super tax.

Lastly, I take the question of the arrears, meaning the amount of rent falling due within a working year which expired before the Finance Act, 1910, came into force, but which in fact was paid in a working year after the Act came into force. Before dealing with this case I will assume a case in which the lease was granted after the Act came into force, and in which the tenant in the first working year paid only half his rent. The rental value for the relevant financial year would then be the amount (being one half) of the rent paid in that first working year. Suppose that then

the tenant in the second working year pays the half-year's arrear for the previous year, and the whole of the amount for the current year. Upon the words of Section 20 (2) (a) it seems to me beyond dispute that the rental value chargeable in the second financial year will be the rent and a half paid by the lessee in the second working year. In other words, all rent paid will from time to time become assessable to duty, whether it be for current rent or for arrears of rent, but duty does not become payable before the rent is in fact paid. If this be true as regards arrears after the commencement of the Act, there is in the statute no variation of language addressed to the case of arrears in respect of working years before the commencement of the Act. So that upon the literal construction of the statute it seems to me to follow that arrears before the commencement of the Act became chargeable to duty. The argument to the contrary is put, as I understand it, in this way. The statute must be contemplated as charging not the mineral rights which the lessor had before the Act and which have been worked out, but such mineral rights as he had when the Act came into force; the arrears of rent due before the Act represent the purchase price of minerals worked before the Act, and to these the statute cannot be contemplated as extending. The fact is, however, that at the commencement of the Act the lessor enjoyed a book-debt or right to payment of a sum of money, and also enjoyed certain minerals which were in the soil and which would thereafter produce rent. There is no reason why the statute should not, if its language be apt for the purpose, charge as well the former as the latter of these. It is argued that if the lessor had got in his rents before the commencement of the Act he would have escaped the duty on them, and that he ought not to be taxed because he was lenient to his tenant and did not enforce payment when the rent fell due. Considerations of this sort do not seem to me admissible. These arrears of rent were in fact paid at a date when, under Section 20 (2) (a), they were to be taken into account in ascertaining the rental value. Upon these grounds, therefore, I arrive at the conclusion that the contention of the Crown as to the arrears is right.

It was further argued that the result of this view is that the working owner dealt with by Section 20 (2) (b) is in a better position than the demising owner under Section 20 (2) (a), for that the former can never have any arrears of rent due from himself, and that he is simply chargeable upon the rental value as from the commencement of the Act. This is true, but furnishes no ground, I think, for construing Section 20 (2) (a) otherwise than according to the plain meaning of the words. Subsection (b) uses the word "received," and this lends some additional force to the argument as to the words "rent paid" in (a) as showing that that which measures the rental value is the sum which in the working year is received by the owner of the mining rights. The language of the statute is, I think, such as to bring in for the purpose of calculating rental value the rent paid by the lessee, whether due for a period before or after the commencement of the Act.

The result, I think, is that the cross-appeal in the Duke of Beaufort's case fails and must be dismissed.—(*The Times*, 8th May, 1913.)

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THE FINANCE (1909-10) ACT, 1910, PART I.

REPORTS OF APPEALS HEARD BY REFEREES

SPECIALLY PREPARED FOR

*The Surveyors' Institution, the Auctioneers' and Estate Agents' Institute,
the Land Agents' Society, and the Central Land Association*

BY

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TOGETHER WITH

REFERENCES TO DECISIONS OF THE COURTS OF
LAW UNDER PART I. OF THAT STATUTE.

PART 3.

OCTOBER, 1913.

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THE FINANCE (1909-10) ACT, 1910.

PART I.

REPORTS

OF

APPEALS HEARD BY REFEREES.

Before JOHN H. MERIVALE, ESQ., *Referee*, 1st April, 1913.

MRS. SHAWE STOREY *v.* THE COMMISSIONERS OF INLAND
REVENUE.

MINERAL RIGHTS DUTY—MINERAL WAYLEAVE FINANCE (1909-10)
ACT, 1910 (10 EDW. VII., c. 8), ss. 20, 22, 23, 24.

Mr. Allen, for the appellant, said that the appeal involved a pure point of law, the facts not being disputed. He should ask the Referee to state a case, and if the Referee would find the facts, it would not be necessary to go very deeply into the law at present. On April 17th, 1912, a demand for mineral rights duty for the year 1911-12 was served on the appellant. The rental value was assessed at £4,966, and this appeal was against that assessment. The Commissioners had agreed that this appeal should settle the amount of duty to be paid in respect of the previous years. The grounds of appeal were : (1) "That in the said sum of £4,966 the sum of £436 7s. 11d. has been wrongly included. The said sum of £436 7s. 11d. is a payment in respect of outstroke, shaft, and wayleave rents on coal wrought out of Clayton's, Lord Hastings', and Lord Ridley's royalties, and brought to bank on the Arcot Estate. The said rents are not mineral wayleaves within the meaning of the Finance (1909-10) Act, 1910 ; (2) That in the said sum of £4,966 the sum of £351 9s. 4d. has been wrongly included. The said sum of £351 9s. 4d. is a payment in respect of wayleave rents on coal from foreign mines not brought to the bank on the Arcot Estate. The said rent is not a mineral wayleave within the meaning of the Finance (1909-10) Act, 1910."

On October 29th, 1908, the appellant demised for thirty-eight years to the Cramlington Coal Company the rights to get coal from the Arcot Estate of 1,750 acres. Certain rights to bring coal over the land were also demised. Clause 9 of the lease was as follows :—

"9. Yielding and paying unto the lessor . . .

"(d) The yearly certain rent of £100 for the privilege of carrying over
"any road or railway, made or used by virtue of these presents,

“ such a quantity of coals, the produce of the foreign mines, as
 “ shall be led over such roads or railways, but shall not have been
 “ brought to bank at any pit, adit, or level of the demised mines
 “ as will at the rate of 49½ decimal parts of a 1*l.* per ton amount
 “ to the said certain rent.

“(e) For every ton of coals, the produce of the foreign mines, led over
 “ the said roads or railways, but not brought to bank at any pit,
 “ adit, or level of the demised mine, over and above the quantity
 “ carried in respect of the said certain rent a tonnage rent of 49½
 “ decimal parts of a 1*l.* per ton.

“(f) For every ton of coals worked from the foreign mines and
 “ brought to bank at any pit, adit, or level of the demised mines
 “ the sum of 7½ decimal parts of a 1*l.* per ton for outstroke,
 “ watercourse, and surface wayleave rent, and an additional sum
 “ of 370 decimal parts of a 1*l.* per ton for shaft rent . . .”

On the appellant's property there were three pits from which coal was raised from Lord Hastings', Lord Ridley's, and Clayton's royalties, which paid rent under Clause 9 (f) of the lease, and the Commissioners claimed duty on £436 7*s.* 11*d.* paid under that clause. There were also other collieries worked by the lessees, not situate on the appellant's property, viz., the Hartford, West Cramlington, and Dudley Collieries, from which coal was brought over the railways on the appellant's property, paying rent under Clause 9 (d) and (e) of the lease. In respect of that coal the Commissioners claimed duty on £351 9*s.* 4*d.*

The appellant's contention was that Sections 20, 22, 23, and 24, all pointed to the duty being levied on minerals which were worked by the proprietor or demised by him to a working lessee. The words “*the minerals*,” in Section 20 (2) (a) and (b), meant the minerals demised in the lease.

In the definition of mineral wayleave in Section 24 the words used were “*the minerals*,” not “*any minerals*,” and they denoted some specific minerals that had been ascertained. The appellant was not concerned with what a wayleave might mean outside the statute, but only with what it was under the terms of the statute itself. In this case the appellant undoubtedly had to pay mineral rights duty on the 1,750 acres which she had demised, but the minerals brought up from outside her property through shafts on her property, and those brought over the railways on her property were not liable to duty; otherwise a railway company would be equally liable to duty for carrying the coals away.

Mr. Shaw, for the respondents, said that the appellant wanted to read into the definition of wayleave the words “the minerals demised by the proprietor of the way-leave,” but that was not what the section said. The words “the minerals” in the definition meant the minerals that the working lessee worked, and if he worked them, it did not matter by whom they were demised. The words “the minerals” were also used in the definition of “working lessee.” If a person who was not a proprietor of minerals allowed a colliery company to bring coal over his land to a

railway, he would surely be liable to mineral rights duty. There was no reference in the sections to the proprietorship of the minerals.

At the conclusion of the arguments it was agreed between the parties that the appellant should draw the case and submit it to the Referee after approval by the respondents, and that a plan of the property should be annexed.

For the appellant: William Allen, instructed by Weld & Weld, Liverpool.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

[Case stated. To be heard in the High Court.]

Before CHARLES BIDWELL, Esq., Referee, 23rd April, 1913.

JOHN ALLEN *v.* THE COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—CONTRACT OF SALE—PAYMENT BY
INSTALMENTS—OWNER FOR THE TIME BEING—LAND USED
BONA FIDE FOR A BUSINESS, TRADE, OR INDUSTRY—FINANCE
(1909-10) ACT, 1910 (10 EDW. VII., C. 8), SS. 16 (2), 19, 41.

Mr. Allen, for the appellant, said that the appeal was against six assessments to undeveloped land duty for the years 1909-12, on plots of land at Caddington, Bedfordshire. The sums involved were quite small, but it raised a question of some importance. He did not propose at the present hearing to raise any points on the third and fourth grounds of appeal, though they might be raised later, but based the appeal on two grounds: "(1) That the appellant was not the owner of the land when the 'duty accrued due; (2) that the land was developed because it had been 'used for the purpose of the appellant's business, trade, or industry, within 'the meaning of Section 16 (2).'" The appellant carried on business as a land developer; he was in the habit of buying land, and then he divided it into plots, advertised it for sale and sent out circulars, and he took payment by instalments from his purchasers, the only difference between the cash price and the price by instalments being 5 per cent. interest payable annually on the unpaid balance. When all the instalments were paid, the appellant executed a conveyance to the purchaser. The six plots in question had been sold to different purchasers, and the appellant was receiving instalments on them. One plot, No. 497, was sold on June 26th, 1905, for £28, 28 shillings down and 5 shillings per month with 5 per cent. interest on the balance payable annually. The agreements were all substantially in the same form. For part of the time the appellant was admittedly owner and in occupation, but for a great part he was not owner. By Section 19 the duty was exigible from the "owner for the 'time being.'" That expression was susceptible of four distinct meanings:

(1) The person who was owner on January 2nd of the particular year of assessment; (2) the person who owned the property on any day between January 2nd and March 31st at the time the assessment was made; (3) if the duty was considered to accrue *de die in diem*, the actual owner while the duty so accrued; (4) the person who was the owner of the land when the first steps were taken to recover the duty; and the first step might be either the notice of assessment and to pay the duty, or some action taken by the Commissioners when there had been a failure to pay.

[Mr. Shaw here said that (4) was the contention of the Commissioner.]

On the Commissioners' contention the appellant was not liable to pay duty on plot 497, as it was conveyed to the purchaser on February 2nd, 1912, before the notice of assessment was served. The appellant contended that the owner for the time being meant the person who was owner on January 2nd of the year of assessment. According to the respondent's view, in the case of a lease which had fifty-three years to run (in which case, by Section 41, the lessee was the owner), if no assessment were made for three years the incidence of the duty would shift to the lessor.

When a contract of sale had been entered into, the vendor ceased to be owner for the purposes of undeveloped land duty either at the signing of the contract or, at any rate, on the entry of the purchaser after signing. Until failure was made in payment the appellant was not owner, but only trustee for the purchaser, to whom would fall any loss or advantage. (*Plews v. Samuel* (1904), 1 Ch., 464.) By the doctrine of conversion, while some of the purchase money remained unpaid, the only estate left to the vendor in the land would be a personal estate. It had been held that the doctrine of conversion applied to all fiscal questions. (*Attorney-General v. Dodd* (1894), 2 Q. B., 150, *per* Mathew. J.) The Commissioners were trying to tax personality, for there was only personality in the hands of the vendor; he was only holder of the legal estate as trustee and had no taxable interest; he was not receiving rent nor an equivalent for rent. The appellant's second point was that the land was used by him for his business. This was a question of fact. The land was the appellant's stock-in-trade and his means of livelihood. This point would apply to the whole period of assessment if the first point were decided against the appellant.

John Allen said he bought land and sold it again, and that was his sole business. He produced a plan of the estate on which the plots in question were. He could not carry on business without buying land. He made no difference in price because of payment being made by instalments. While the purchaser paid his instalments he had no control over the property.

Cross-examined: Sometimes he had to hold the land for some time before he sold. He had bought this estate in 1900; nearly all of it was sold now. Till he sold it it was not used at all, not even for pasturage. A certain number of purchasers failed to keep up their payments, and if there was no chance of getting the money he resumed possession.

Mr. Shaw, for the respondents, said that the doctrine of conversion was not relevant. Section 19 must be read with Section 16 (1). The assessment was made in respect of the land, and Section 19 said by whom

that assessment was to be discharged. He agreed that there were four possible constructions of "owner for the time being," but the Commissioners contended that it meant what it said, *i.e.*, that if there were duty undischarged on the land it was recoverable from the owner for the time being. Only one plot had been actually conveyed at the date of assessment; as to five plots, all the instalments had not been paid, and no conveyances had been executed. These were executory contracts; certain conditions had to be complied with and fulfilled, and till then a purchaser could not call for a conveyance. Until the actual conveyance the appellant was the legal owner. (*Addison on Contracts*, 1903 edition, pp. 447, 449.) When the conditions that the purchaser had to fulfil had been carried out he became entitled to specific performance, and was equitable owner, and the legal owner was merely a trustee, but until all the payments had been made, the purchaser could not get specific performance. "Rents and profits," in Section 41, meant "rents or profits."

Allen was the legal owner, and was entitled in possession to the profits of the land in virtue of an estate of freehold. The money paid in instalments represented the profits of the land. It was a business arrangement between Allen and the prospective purchaser. Allen parted with the possession of the land, but remained in possession of the profits of the land. The fact of rescission in some cases confirmed the view that the property did not pass till all the instalments were paid. *Bona fide* user must mean more than remaining in possession of land, holding it up till sale.

Mr. Allen, in reply, agreed that the user must be *bona fide*, that was why he suggested that it was a question of fact that had to be determined. The fact that the appellant advertised, sent out circulars, cut the land into plots, and marked out roads as soon as he bought the land, showed his *bona fide* intention of using the land for his business. It was similar to a draper folding up blankets and leaving them on a shelf in his shop. The respondents had not dealt with the doctrine of conversion. By Section 16 undeveloped land duty had to be charged on the site value of land; land was defined by Section 2 of the Interpretation Act, 1889, as including buildings, but was nowhere defined as including money. A vendor only had a lien on property for the unpaid purchase money, so it must be shown that the owner of such a lien was a person entitled to the rents and profits by virtue of an estate of freehold, whereas a lien was neither a sum certain nor a benefit accruing out of the land. Even if purchase money fell within Section 41, it was realised on the date when the contract of sale was signed, and none of it accrued as rent or profit after that date.

Awarded: (1) That "the owner of the land for the time being" liable to undeveloped land duty in the case of hereditament $\frac{20^a}{2411}$ is F. Ellingham.

(2) That "the owner of the land for the time being" liable to undeveloped land duty in the case of parts Nos. 9 and 10 forming part of

U, U^a, and U^b
hereditament $\frac{11}{225}$ is Harry Edwin Hill.

(3) That "the owner of the land for the time being" liable to undeveloped land duty as to the remaining parts Nos. 11 and 12 forming part

| | |
|--|--|
| U, U ^a , and U ^b | U, U ^a , and U ^b |
| of hereditament | and also as to |
| $\frac{11}{225}$ | $\frac{7 \text{ and } 87}{225}$ |
| | and also as to |

| | | |
|--|--|-------------------------------|
| U, U ^a , and U ^b | U, U ^a , and U ^b | |
| $\frac{44}{225}$ | $\frac{83}{225}$ | is John Allen, the appellant. |
| and also as to | | |

For the appellant : William Allen, instructed by W. H. Brown.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

[Appeal pending.]

[NOTE.—The effect of this award is that as regards the plots which had been conveyed by Mr. Allen to the respective purchasers before the assessments in respect of undeveloped land duty were served on him, although subsequent to the coming into operation of the Finance Act, the Referee decided that the appellant was not the owner for the time being, but that the person to whom they had been conveyed was such owner. In these cases the purchasers had paid the whole of their purchase money and taken a conveyance.

In respect of the balance of the plots, which, although under contract for sale, had not been actually conveyed, the Referee decided that the appellant was the owner for the time being.]

Before THOS. BINNIE, ESQ., *Referee*. 23rd April, 1913.

HENRY AND EDWARD TAYLORS' TRUSTEES v. THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—PROPERTY OF SPECIAL VALUE TO NEIGHBOURING PROPRIETOR—SUFFICIENCY OF VALUATION—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 27.

This was an appeal against the provisional valuation of a property consisting of three contiguous tenements, and forming Nos. 140 and 148, Bath Street, and 101 to 107, Sauchiehall Lane, Glasgow, with a frontage also to West Campbell Street, and covering an area of 1,136 square yards. The figures in the provisional valuation, so far as material to the appeal, were :—

| | £ |
|---|--------|
| Original total value (at 30th April, 1909) | 17,677 |
| Original assessable site value | 7,354 |

The appellants' predecessors purchased one of the tenements in 1897 at £8,500, and the remaining two in 1898 at £8,600, making a total price of £17,100. In 1904, and again in 1905, the property was returned for

estate duty purposes at £19,000. In 1911, after the appeal had been intimated, the property was sold for £24,000 to Messrs. Pettigrew & Stephens, Limited, drapers, 171-193, Sauchiehall Street; and the appellants claimed that the total value as at 30th April, 1909, was not less than that sum.

Messrs. Pettigrew & Stephens are the proprietors of the western portion of a block of buildings bounded by Sauchiehall Street on the north, Wellington Street on the east, Sauchiehall Lane on the south, and West Campbell Street on the west, the remaining portion of the block being the property of Messrs. Copland & Lye, a rival firm in the same trade. The appellants' property formed the western portion of a corresponding block situated on the south side of Sauchiehall Lane and bounded by Bath Street on the south. The greater part of the eastern portion of this second block had recently been purchased by Messrs. Copland & Lye for the extension of their main premises, to which a connection was made by a gangway across Sauchiehall Lane. The appellants' property presented, therefore, the only outlet available to Messrs. Pettigrew & Stephens for the extension of their existing premises.

Evidence was led by the appellants to the effect that prior to 1909 Messrs. Pettigrew & Stephens had made inquiries if the appellants' property was for sale, and that in 1909, as the necessity for looking ahead became more imperative, they had offered £10,500 for the two tenements which had been purchased by the appellants' predecessors in 1898 for £8,600. The chairman of Messrs. Pettigrew & Stephens, who was one of the witnesses, said his company would probably have given the same price for the whole property in 1909, as they afterwards did in 1911, rather than let it go to someone else.

For the appellants it was maintained (1) that the evidence showed that the property was as valuable in 1909 as it was in 1911, (2) that it was common knowledge that heritable property had decreased and not increased in value between 1909 and 1911, and (3) that the special value of the premises to Messrs. Pettigrew & Stephens was a consideration which the Referee must take into account in fixing the values in the provisional valuation. The following cases were referred to, viz.: *Lucas v. Chesterfield Gas and Water Board*, 99 L. T., 767; (1909), 1 K. B., 16; *Inland Revenue v. Walker* (1913), S. C., 719; (1913), 1 S. L. T., 309.

For the respondents it was maintained (1) that the sale in 1911 took place under exceptional circumstances, the premises being of much greater value to the actual purchasers than to anyone else, and (2) that the figures in the provisional valuation were justified by the prices actually realised for other property in the vicinity, including a portion of the same block in Bath Street recently acquired by Messrs. Copland & Lye.

The Referee, without stating his reasons, found that the original total value at April 30th, 1909, was £24,000, and the original assessable site value £13,384.

For the appellants: Kerr & Barrie, Glasgow.

For the respondents: Alexander Blair, Chief Valuer for Scotland.

Before HOWARD MARTIN, Esq., *Referee*, 25th April, 1913.

SOUTHEND ESTATES COMPANY, LIMITED, v. THE COMMISSIONERS OF
INLAND REVENUE.

UNDEVELOPED LAND DUTY—AGRICULTURAL LAND—LEASE MADE
BEFORE APRIL 30TH, 1909—POWER TO DETERMINE—FINANCE
(1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 17 (5).

This was an appeal against an assessment of undeveloped land duty on land at Southchurch, of which the appellants were the freeholders. The land in question was by a lease dated December 4th, 1906, let to a tenant for seven years from September 29th, 1904, and the lease contained the following reservation: "... and also reserved to the lessors full " liberty for them at any time and from time to time during the term to " enter upon and resume possession for building or other purposes of any " part or parts of the said land coloured blue on the plan . . . on giving " to the lessee one calendar month's notice in writing . . . the lessors " allowing for all land taken for any of the purposes aforesaid an abatement " from the rent at the rate of £2 per acre." It was agreed that all the land was liable to undeveloped land duty unless it came within the exemption in Section 17 (5), and the value of the land and the amount of duty payable, if liability existed, were also agreed. The respondents admitted for the purposes of the hearing that the appellants did not require the land for building purposes prior to September 29th, 1911, the date when the lease determined.

Mr. Lamb, for the appellants, said that the Commissioners contended that undeveloped land duty was payable from May 29th, 1910, *i.e.*, one month after the Act was passed. This was a taxing statute and must be construed most strictly against the Revenue. (*Oriental Bank Corporation v. Wright*, 5 A. C., 842.) A deed must be construed most strictly against the grantor, and the words "or other" in the reservation in the lease were governed by the words "for building." (*Johnson v. Edgware Railway Company*, 35 Beav., 480.) The appellants could not have taken the land in order to let it, *e.g.*, to a football club or an agricultural show, and they did not require the land for building. The Commissioners' contention involved construing a taxing statute in favour of the Revenue and a deed in favour of the grantor. The first part of Section 17 (5) exempted the appellants from duty altogether, if it were not for the reservation in the lease. If the appellants required a part of the land for building they would be taxable; they had in fact resumed part of the land, and had been taxed on that part. The amount resumed was 36 acres, and of that they had up to date only sold 3 acres. The appellants could not give notice till they actually required the land for building, and the Commissioners had no right to tax them till they were entitled to resume possession. The power to give notice did not arise merely because the appellants wished to give notice.

Mr. Shaw, for the respondents, said that this was a case where the subject was claiming exemption, so that the onus was on him to prove that he came within the exemption. Section 17 (5) was enacted because

it was felt that it was not fair in the case of a landlord who had let his land to tax him when it was out of his power to develop the land ; but if under the agreement the landlord could determine the tenancy, the exemption no longer applied. The words of the section were " has power to determine," so that the question was whether the landlord had power to determine. In some cases the landlord had power to resume for certain purposes, in others the landlord had power to resume if he required the land for certain purposes ; in these latter cases the Commissioners considered that unless they proved that the landlord did in fact require the land, the landlord had not power to resume. In other words, Was it in the discretion of the landlord to resume or not ?

The Referee : Undeveloped land is assessed whether it is required for building or not. The point of the section seems to be whether the landlord can get the land when it is required for building. Therefore the date on which it is required is immaterial.

Mr. Shaw : It did not matter whether the landlord wanted the land for building, but had he power to get possession if he did require it ? If the words " or other purposes " were not in the covenant, it would make no difference to the respondents' argument. If the appellants wished to develop they could, and the Commissioners contended that the clause in the lease amounted to a power to determine within Section 17 (5). If the landlord had power to resume any part or parts of the land he had power to resume the whole.

The Referee : The effect of the section is that if the lease is of such a character that whenever the land is ready for building the landlord can get possession, then he is liable to be taxed, because the tenancy does not delay the use of the land for building.

Mr. Shaw : The case of *Johnson v. Edgware Railway Company* had no bearing ; the appellants gave no meaning to the words " or other."

Mr. Lamb, in reply, said that he had only quoted *Johnson v. Edgware Railway Company* to show the meaning of the words " or other." The words in Section 17 (5) " the tenancy of the land or that part of the land " shall not be deemed to continue after the earliest date after the commencement of this Act at which it is possible to determine the tenancy " under that power " were very important. The proviso did not operate till something had happened. How could the clause be a power to determine when the appellants did not want the land for the only purpose for which they could determine ?

The words of the section were not " provided that where the lease has " a clause in it saying that the landlord can determine." If the Commissioners' contention were right, the words " or that part of the land " would not be necessary.

Awarded : That the appellants have power to resume possession of the land, and that it is liable therefore to be assessed for the payment of undeveloped land duty.

For the appellants : T. Lamb (Todd, Dennes & Lamb).

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

[Appeal pending.]

Before P. F. TUCKETT, ESQ., Referee, 6th May, 1913.

ALLEN AND NORRIS v. THE COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—POWER OF COMMISSIONERS TO ASSESS TO DUTY FOR PART OF A YEAR—OWNER FOR THE TIME BEING—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), SS. 16, 19.

This was an appeal against an assessment of undeveloped land duty on land, the property of the appellants, situated off the Fulham Palace Road, and forming part of the Crabtree Estate. The land was approximately 10 acres $\frac{2}{3}$ roods in extent, and by the provisional valuation the assessable site value had been fixed at £18,303, and the value for agricultural purposes at £1,073. An allowance had been made by the Commissioners of £3,434, that sum representing the proportion of the assessable site value attributable to 1.97 acres, which were treated as exempt, owing to the expenditure of £197 on roads by the predecessors of the appellants. The amount therefore on which duty was assessed was £13,796, and the duty for the previous year, amounting to £28 14s. 10d., was paid by the appellants' predecessors. The appellants entered into a contract to purchase the land in January, 1911, and the purchase was completed in the following July. The Commissioners treated the land as being developed from July 26th, 1911, and the appeal was against an assessment of £9 2s. 2d., which the Commissioners claimed to be payable by the appellants as being the proportionate amount of duty from April 1st to July 25th, 1911. The assessment was served on July 15th, 1912.

Mr. Norris said that the appellants' first point was that the Commissioners could not break up a year, and assess for a portion of it. By Section 16 (1) the duty was payable "for the financial year ending the thirty-first day of March, 1910, and every subsequent financial year," and the Commissioners could not read into the Act more than it said. The duty was an annual duty on the site value at the rate of $\frac{1}{2}$ d. in the £, and the Act did not say that a portion of $\frac{1}{2}$ d. was exigible for a portion of a year. An exemption having come about during the financial year, no duty could be charged, and if land ceased to be chargeable during the year it was exempt for the whole year. By Section 19 the assessment was to be made on January 1st, and in this case on January 1st, 1912, no duty was payable, as the Commissioners admitted that the land was developed as from July 26th, 1911. If the appellants paid duty on January 1st, and the land became exempt on January 2nd, the Commissioners would have to return the money. The second point was that this land was a second portion of one whole estate; the other part was of about the same area, and had been bought by the appellants some three months before this land, both portions having previously been in the same ownership. Considerably more than £100 per acre had been spent on roads on the first portion; in fact, more than would suffice to exempt the acreage of both portions, and that expenditure should therefore exempt the second portion from duty. The third point was that the words "owner for the time being" had not

yet been legally defined. It might mean the owner for the period during which the duty was chargeable, and in this case the assessment should perhaps have been served on the appellants' predecessor.

Mr. Shaw said that he would deal first with the appellants' second point. To claim exemption under Section 16 (2) (b), the land must be included in a scheme of land development, and the owner must show that he or his predecessors had incurred expenditure under the section. In this case the respondents had not heard of this point till it was raised by Mr. Norris; they did not know the facts, and no evidence on the point had been given. He could not deal with the point, except to say that there had been no attempt to prove expenditure or a scheme of land development; and he submitted that it was not possible for the Referee to decide on the point, as the Commissioners had given no decision, and knew nothing about it. That the question had to go first before the Commissioners was shown by the words in Section 16 (2) (b), "the part of the land to be treated as "land developed . . . shall be determined by the Commissioners."

The appellants' first point was absurd. If the assessment was to reach the taxpayer on January 1st, the Commissioners must have assessed previously, and they had power to assess at any time during the financial year. This was a question on which authority could not be found; it was a question of common-sense. This land was undeveloped for a portion of the year, and a duty was cast on the Commissioners by Section 19 to assess in respect of it. It might just as well be said that if land was undeveloped for a portion of the year, duty was payable for the whole year.

As to the third point, he admitted that "owner for the time being" was capable of four meanings, but the respondents' view was that it meant the owner for the time being when duty was unpaid. The debt, so to speak, ran with the land. The only interpretation that would suit the appellants was "the owner for the portion of the financial year during "which the duty is accruing due."

Mr. Norris, in reply, said that Section 19 clearly meant that there should be no assessment before January 1st. The Act said that exemption must be given when certain circumstances happened, and the exempting circumstances had happened in this case. He maintained that there was no authority as to what "owner for the time being" meant, but he did not propose to put an interpretation on it.

Mr. Norris then asked for an adjournment to call evidence on his second point, or alternatively to be allowed to give evidence himself, but the application was refused by the Referee.

Awarded: That the assessment of £9 2s. 2d. is payable by the appellants.

The appellant Norris in person.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

*Before DANIEL WATNEY, ESQ., Referee, 8th, 9th, 19th, 20th, and
28th May, 1913.*

HUNTER *v.* THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—AGRICULTURAL LAND—DIFFERENCE
BETWEEN GROSS VALUE AND FULL SITE VALUE—TENANT-
RIGHT—VALUE FOR AGRICULTURAL PURPOSES.

Mr. Allen, opening for the appellant, said that this was an appeal against a provisional valuation, and was brought to find out the proper method of arriving at the site value of agricultural land. Difficult questions of law were involved, and a large amount of money depended on them. The farm in question, Chells Farm, was 468 acres 2 roods 32 poles. There was a good house, modern buildings, homestead, and nine cottages. The points raised were: (1) The correct difference between the gross value and the full site value; (2) whether the tenant-right, *i.e.*, all or any of the matters for which a new tenant would pay, were included in the gross value, and should be deducted to arrive at the assessable site value: (3) whether the value for agricultural purposes had been correctly arrived at.

On the first point, to arrive at the full site value one had to consider what was taken off the land. The house, the farm buildings, the fences round the house, drainage, the water supply and the cesspools, the off-lying homestead, the water supply to that, and the fences round it, the nine cottages and the drains and fences round them, came off; also the timber, fruit trees, and fruit bushes in the garden, timber including all trees. A further deduction was £560 for live fences. [At this point Mr. Allen put in a full site plan of the farm]. There was a road from the main building to the off-lying farm. He claimed that that came off as a structure appurtenant to the outlying farm, it being the only approach to it. There was a private road up to the farm, and he asked that this should come off. There were two other roads on the farm leading from the high road into the fields, but he did not ask for a deduction for them at this hearing. The full site plan showed what a purchaser on April 30th, 1909, would get for his money. What would be in the mind of the purchaser if he had to buy a farm cleared of fences? Neither a farmer nor an investor would buy it. The only purchaser would be a land speculator, who hoped to make a profit after erecting buildings.

Another question was whether the farm was being used in the best way possible. The farm had no building value. It was two miles from the nearest village, and seven miles from Hitchin, which was the nearest town of any size. A buyer of the bare farm would have found no house, no sheds for cattle, corn, fodder, implements, and no cottages for his labourers, and the difficulty of getting labour was shown by the fact that Hunter had to build cottages himself. The cattle could wander from the pasture to the arable land, and from his farm to other properties. Mr. Frank would say that he did not think that any one would give more

than £5 an acre for the farm, stripped of what the respondents agreed should be divested, and if, in addition, the drainage and the two roads were divested, no one would buy it. On the question of divesting the roads and their appurtenance to the buildings, Counsel quoted *Kay v. Oxley*, 10 Q. B. D., at page 365, *per* Blackburn, J., and *Bailey v. G. W. R.*, 26 Ch. D., 434, *per* Bowen, L.J., at page 453. He would try to test the value of the bare farm in another method. It would be necessary to re-equip. The present buildings were not excessive. In 1898 or 1899 the farm buildings were burned down. The appellant was then the occupier. The minimum of buildings were put up. The purchaser of the full site would have to consider the cost of replacing the buildings, &c. If the land were divested of everything it would not be economically sound to bring it into cultivation again. In the Colonies, dealing with virgin soil, one could crop the land without putting manurial value into it, but one could not do that in England.

On the second point [here Mr. Kingdon said that the unexhausted manures and crops belonging to the tenant were not included in the total value] Mr. Eve, in 1910, made a valuation between the appellant and the trustees of his father's will. His valuation came to £8,500, and he left out £500 worth of buildings and about £1,000 for tenant-right. The appellant was misled when he agreed to a total value of £10,000, believing that the tenant-right was included, and until this week no one had an idea that the Commissioners were not valuing in accordance with the Act. By Section 25 you had to sell the fee simple; by Section 41 fee simple was defined as fee simple in possession not subject to any lease. It included everything in and attached to the land. Seeds in, or plants on, the land were not the subject of common law larceny, being considered part of the land. A less price would be taken for the land subject to a lease, as the purchaser would have to make compensation for the tenant's unexhausted improvements. Under this statute no tenant's interest was to be taken into consideration. Assume a farm worth £10,000, and assume the difference to be £5,000, with the tenant-right included in all the values. The total value would be £10,000, and the full site value £5,000. The deductions would be first £5,000, secondly £1,000 under Section 25 (4) (d), and the assessable site value would be £4,000. Suppose a sale for £11,000, the same deductions. The assessable site value would be £5,000. From that must be deducted 10 per cent. on the full site value, namely, £500, and the tax would be £100. If the tenant-right were not included the gross value would be £9,000; the full site and assessable site value would be £4,000. If the land were sold for £10,000 the assessable site value would be £5,000. Deducting 10 per cent. on the full site value, namely, £400, the result was a duty of £120, instead of £100. He asked the Referee to find that the total value and the gross value set out in the provisional valuation were correct, including the tenant-right. Assuming the tenant-right to be included, then a deduction might be made for something personal to the owner. (*The Commissioners of Inland Revenue v. Walker*, S. L. R., April 16th and 23rd, 1913.)

On the third point he submitted that the agricultural value of the land

was its value on April 30th, 1909, with all the necessary agricultural adjuncts of that land. By adjuncts he meant all the necessary equipment of the land, and all that was contained therein, and everything that would be bred upon it. It included the sporting value. The agricultural value, according to the Commissioners, was £9,755, namely, £10,000, the total value, less the sporting rights, £245; but he submitted that the tenant-right must clearly be included in the agricultural value, and also the value of the sporting rights.

The questions for the Referee to decide were: (1) Was the Commissioners' difference between gross value and full site value correct? (2) Should gross value include the tenant-right? (3) Was tenant-right a matter which should form the subject of a deduction under Section 25 (4) (a)? (4) Had the agricultural value been correctly ascertained?

The first provisional valuation was served on April 25th, 1912; an amended provisional valuation was served on September 2nd, 1912, and a second amended provisional valuation on March 10th, 1913. The gross value and the total value were not disputed. By the first provisional valuation the difference between the gross and full site values was £2,048; in the valuation on September 2nd, 1912, there was no change in the deduction, though notice of appeal had then been given. In the first provisional valuation the agricultural value was put as being the same as the assessable site value. [Mr. Kingdon said that this was palpably a slip.] This showed that the valuations were made carelessly. In the first amended provisional valuation the agricultural value was put at £10,000; in the second amended the difference between gross value and full site value was put at £4,620. These differences did not give confidence in the valuations, as it took three attempts by the Commissioners to get at what they said was the right agricultural value.

G. M. Hunter said that Chells Farm was bought by his father in 1886. He bought it from his father's trustees two years ago, and had been there for twenty-six years. Since the fire in 1896 he had used it as a dairy farm. He kept about 80 cows, and he averaged about 400 lambs a year from Scotland. Before that he had fattened bullocks. He said the present method of farming was most suitable for the farm. He could not do with less buildings, or with the present buildings, unless his brother reared his young stock. The house was not in excess of his requirements. He built three of the cottages before April 30th, 1909. He could not get sufficient labour with six cottages. The buildings were insured for a total amount of £1,475. One building, to hold two horses, was not insured. It cost him about £120 to build. The land was very heavy and wet. The drainage was about 4 feet deep, and it required draining 2 feet deep. It would be unworkable without drainage. The fences were not in excess of the requirements. Some farmers would require more. He had seen Mr. Eve's tenant-right valuation, as on April 30th, 1909, and it showed approximately the correct values at that time. Mr. Eve valued between him and the trustees on August 28th, 1910, at £8,500, not including three cottages which he had built. It took a capital of quite £5,000 or £6,000 to run a farm like this. He locked up the road, and there was no footpath or bridle-road to his house.

Cross-examined : He believed his father bought the farm in 1886 for £8,250 at the Mart. He did not know if it included the timber. He would say that the land dropped in value and then regained somewhat. He would not think it was as valuable now as in 1886, though he had made a lot of improvements. The buildings in 1886 were totally different, inferior in quality, but greater in quantity. The previous tenants farmed the farm differently, and they nearly all went bankrupt. He found great difficulty in getting buildings at the time of the fire. He had held the land under an agreement from his father for seventeen years from 1892. If he put in seeds and worked the tillages he expected to be paid for it. He thought the custom was that if he sold the hay and straw he had to cart back manure. He knew a great many fences had been divested during the last twenty years. He had not altered the mode of cultivation during the last four years. From the house to Chells Green there was a public bridle-path. He did not know what the buildings cost to re-erect after the fire.

Re-examined : Since he took the farm he had put foundations to the road and metalled it. The farm could not be used with buildings in the neighbourhood. All the buildings round about were full. He had kept the farm at the top of cultivation. He considered that manuring the farm had made the land more valuable. He had laid down 100 acres in grass.

H. Trustram Eve said he had made a valuation and report in 1910. The land was not good, and the farm was badly served by roads. The improvements in the house were included in the valuation. The outgoing were £101 1s. 2d. The three cottages were not included in the valuation. The fee simple value of the farm he estimated at £8,500. A fair rent, the tenant doing repairs, was 13s. per acre, including the entire right of sporting. At the time of the valuation he was told by both parties that he was to know nothing as to the price. He was told on legal advice that the total value included the tenant-right, and he had accepted the total value in that belief. He considered the full site value with the conditions of open market, willing seller, freehold, tithe and land tax free, the fences of adjoining tenants left, and the land drains, culverts, posts and wire fences, roads, grass, and farm gates remaining. The farm could not be occupied as an outlying farm. The larger the hereditament the more unwieldy it was, and the lower would be the full site value per acre. The purchaser would say that he could not re-equip for less than £10 to £12 per acre. There were seven miles of fences, which he estimated at £240 per mile. The cottages would cost £150 each. He thought some of the hedges were unnecessary as Hunter farmed it, but not for the ordinary Hertfordshire farms. He could not farm without timber. He might sell it at £5 an acre divested as the Commissioners said it should be divested, but if the roads and the land drainage were divested it would be absolutely unsaleable, as a buyer could not be found for a heavy undrained farm. A buyer could not farm for the first year if he bought it as divested by the Commissioners. The full site value could not be arrived at by capitalising an annual full site value. It was possible to arrive straight away at the divested value, bearing in mind what would be in the mind of the purchaser. The man-made things would cost £10,413 to reproduce,

leaving out the land drainage, farm gates, road and rail and wire fences. The basis of the tenant-right valuation was cost, and did not include any profit. The items would be worth more to a purchaser on April 30th, 1909. A field sown with potatoes would fetch more than one lying with wheat stubble, and land, if tilled, sown, and full of manure, would fetch more as agricultural land than if not tilled. There was a difference between tenant-right under gross and under full site value conditions.

Cross-examined: The manorial values, tillage, and clover seeds were meant for the benefit of the owner in the following year. Under the Agricultural Holdings Act, 1908, tenant-right was calculated on the value to the incoming tenant. If the tenant was going out as a willing seller on April 30th, 1909, his valuation was what he would pay. The custom in Hertfordshire was that as a man entered so should he leave. Assuming the landlord in possession, the gross value would be higher. He had never known a tenant sell his tenant-right. In June, 1912, he thought the tenant-right had been included. He claimed the deduction in November, 1912. His father had valued the farm in 1900. In Walkern parish there were a good many hedges, but he could not give the cost of putting them up again. No conclusions could be drawn from the Agricultural Rates Act as to the Finance Act. The Commissioners took the house, &c., at £48, and capitalised it at twenty years' purchase, getting £960 as the cost of re-equipment. £1,920 was the capital amount of the fixed charges, and that equalled £4 2s. per acre. He was entitled to say it was worth £5 an acre. Four and sixpence per acre was roughly the outgoings, so it was really allowing 17s. 6d. per acre per annum. Re-equipment would cost £11 to £12 per acre for a house and homestead such as this. He calculated the cottages at 5d. per cubic foot for two and 6d. per cubic foot for six. These cottages could not be built at less than £300 the pair. In valuing for mortgagees he would not include tenant-right if the land were let to a tenant as he would be dealing with the owner's interest. It seemed to him that fee simple in possession was two interests, while owner's interest was one. He had given evidence in *Cox's Trustees v. Hertfordshire County Council* on March 15th, 1913. He had said that agricultural land was difficult to buy. He was talking about a farm quite close to Hitchin. The rental values in Stevenage had not altered nearly so much as in other districts. In Baldock unenclosed land was not unsaleable. Everyone who bought an acre had the right to shoot over the whole lot. Site value depended on shape and position. If the house and homestead were burned down, you could get someone to give something for the farm. If the hedges were taken off no one would give more than £5 per acre. According to the provisional valuation, the gross value worked out at £25 8s. 10d. per acre, the total value at £21 6s. 10d. per acre, the full site value at £15 11s. 7d. per acre, the assessable site value at £11 9s. 8d. per acre, and the fixed charges at £4 2s. per acre. His £5 per acre was instead of the £15 12s. in the provisional valuation. He did not suggest that his amount for reinstatement should be deducted from the gross value to arrive at full site value. The cubic contents of the house were 51,740 feet. He thought that was required for a farm of this size, and in his experience 7d. per cubic foot was the right cost of building. The house

was stucco and plaster. A possible bidder would erect a brick house. As a practical man he did not agree with 4½*d.* per cubic foot, the cost set out in the report of the Departmental Committee on buildings for small holdings. £3 per chain reinstating the fences covered the bidder's liability over ten years. The cost of putting up a quick fence and one guard-rail would be £1 5*s.* 11*d.* per chain. A man would be a fool to put up a wire fence, as it would give no shelter for stock. It was agreed that if every tree were cut down and sold the commercial value would be £450.

Re-examined: He looked at assessable site value as a figure on a scale to measure a rise or fall. He had never known a buyer to buy on the basis of assessable site value, and he did not think any farmer would buy a farm under full site conditions. Valuing for rating one did not look on the parish boundaries as watertight compartments. A prudent bidder would have to pay 6*d.* per cubic foot to build cottages. The equipment of a 500-acre farm could not be compared with the equipment of a small holding.

By the Referee: His full site value was £2,340 and his value for agricultural purposes £10,973.

Howard Frank said that during the last three years he had sold country property worth over £8,000,000. He had been over the farm. He assessed the divested value, assuming no tithe or land tax, at £5 10*s.* per acre, *i.e.*, £2,570. He based it on what the property might fetch. He did not think it would sell at auction, but it might be sold privately afterwards. He did not think adjoining owners would buy it at that price, and he thought that only a speculator would buy it. About April 30th, 1909, there were plenty of equipped farms on the market. If the timber were taken away the value of the farm would be depreciated much more than the commercial value of the timber.

Cross-examined: The full site value would be £4 12*s.* per acre if 25 years' purchase of the land taxes were taken. He could easily conceive the value, deducting fixed charges, being 3*s.* per acre. He had only considered the value of the farm as a whole divested.

Re-examined: He did not think the farm would be suitable for splitting up.

Douglas T. Thring said he had been over the farm and had been through Mr. Eve's measurements. Assuming them to be correct, his figures for the buildings agreed with those of Mr. Eve. He estimated the full site value without land tax, divested according to the Commissioners' view, at not more than £5 per acre; if divested also of all roads, land drainage, gates, and wire fences, at not more than £1 per acre. He had had much experience of quick fences. Wire to protect fences was not popular. It pulled off horses' shoes and damaged their fetlocks. A single row of quick was not satisfactory. The cost of a double row with two guard-rails he estimated at five guineas a chain, including planting and maintenance on a new site. It would be more costly on an old site owing to grubbing the roots and manuring. He thought the farm divested would be sold to a speculator. It was not suitable to cut up into small holdings.

Cross-examined: He did not think the farm could be practically sold piecemeal to surrounding farms. A purchaser might split the farm into

two or re-equip it as two farms. He did not think it would be necessary to reconstruct brick for brick, but he did not think the farm had sufficient equipment. A wire protecting fence would cost 1s. a yard. He did not know the cost of a chestnut paling fence. He thought all the existing fences were necessary. The full site value would be £4 2s. per acre. A pair of cottages could not be built under £450.

Re-examined : He thought the best price could be got for the farm as a full site proposition whole and not split up. Split chestnut fences would not be suitable for the farm.

Henry George said he was a valuer ; he farmed 1,300 acres in Hertfordshire, and had known Chells for thirty years. £5 an acre would be a very good offer for it divested. It would fetch the best price as a whole, and was not suitable for small holdings. This class of land was best in a large farm. It could not be farmed without the house, fences, and trees.

Cross-examined : The farmer would want as many fences as there were at present, though some of the fences might be better. The soil varied in some of the fields. There was not a great quantity of unfenced land in the neighbourhood.

Re-examined : There were plenty of other farms as big in the neighbourhood. He did not believe a buyer for this particular farm as a full site proposition could be obtained.

John William Smith said he farmed 1,000 acres in Hertfordshire and 500 acres in Huntingdon, and a portion of his land joined Chells. He built a cowshed similar to Hunter's, copied from his, of the same dimensions, without an architect, and it cost him £700. He had fenced a part open to a road. It would be impossible to farm Chells without buildings and hedges. Chells had been offered to his father-in-law at about £16 10s. per acre. He did not think a purchaser could be found at £5 an acre on full site conditions. A small holder could not live on the farm. The equipment was not in excess of the requirements, and one could not do with less fences.

Cross-examined : Hunter's building conditions would be more difficult, as he was further from a station and a town. Chells could not be farmed as a dairy farm with wire fences. A buyer would not give more than £5, tithe free, divested. He himself would not buy for one year's rent if he had to put up fences and buildings.

John Inns said he was a very large farmer in Hertfordshire, and had bought a good deal of agricultural land. He owned some land adjoining Chells. Divested of the house, &c., he thought he would give £5 to £6 an acre for it, but he did not think a buyer could be found to give more. If the two roads and the field drainage were divested, he would not give as much as £5 or £6. One would have to have homestead and buildings to farm Chells.

Cross-examined : He bought Chells Farm on August 6th, 1885, for £8,250. That did not include the tenant-right or timber. He could not remember ever buying a full site piece of arable land, though he did buy one field of pasture without fences. He owned a farm at Kelshall of about 632 acres which was practically one field, 500 acres being in one field. He tried to make profit at farming out of the land.

Re-examined: He sold Chells Farm to Mr. Hunter, who gave him £500 to take his place, not including the timber. He gave the tenant whom he had recommended the tenant-right. It could not be farmed with less fences.

Mr. Kingdon, opening for the respondents, said that he proposed to deal generally with the questions at issue. The first question was the difference between gross value and full site value. The only dispute was as to the land drains and two roads on the question of divestment. The appellant said that the drains were structures appurtenant to, or used in connection with, buildings, but the cases quoted turned on the words used in the deed, and any principle applying to a right was absurd when applied to the land. The appellant said that the roads were structures appurtenant to the house.

The second point was the deductions to be made under Section 25 (4) (d). Unless the tenant-right was included in the total value it could not come off, and there was no appeal against the total value, so that unless the total value in law included the tenant-right it could not be taken off. If the tenant-right were included in the total value, it could only be included on a principle which made it impossible to take it off. What had to be considered was the permanent abiding value of land, and the only criterion of that was selling and letting. No landowner took into account compensation between tenant and tenant as to the value of his land. Mr. Eve could not conceive of a tenant selling a mere pecuniary claim, and this claim was merely a pecuniary claim. He suggested that there was nothing in the Act importing a different method of valuation to that which had been used. Tenant-right was not, and ought not to be, included in the total value.

The third point was the agricultural value. The appellant claimed that that included the sporting value and what was necessary to equip the farm or its present equipment. He submitted that this was nonsense. Agricultural value corresponded to total value, but one had to eliminate value which it possessed only for purposes other than agriculture. Section 7 was a specific direction as to what should be included in a value to be arrived at at a certain time and for a certain purpose. A value on April 30th, 1909, could not have anything to do with a value on an occasion for increment value duty. The deduction for tenant-right, if any, was not the value of the crops in the land, but the appropriate allowance to the tenant.

C. J. Howell-Thomas, Deputy Chief Valuer for England and Wales, said Chells had frontages of $1\frac{1}{2}$ miles to outside roads. Two of the present buildings were not in existence on April 30th, 1909. The soil varied very considerably, and the fences were particularly poor. Most of them would be better down altogether. An inspection for valuation was made on April 19th, 1912. He had not been concerned with this appeal till about June or July, 1912, but he accepted responsibility for the figures on which they were now fighting. On March 10th, 1913, it was considered advisable to make an alteration in the figures. The gross value was put at £11,200, and the total value at £10,000, and these figures were not challenged. The deductions were £4,620, assessable site value £5,380,

and the value for agricultural purposes £9,755, excluding £245 for sporting—*i.e.*, it was the total value minus sporting rights. The total value and the agricultural value did not include the tenant-right. A site value of nil was claimed in the notice of objection. The full site value was put at £7,300, assuming the land to be divested of houses, cottages, farm buildings, water supply to buildings, growing timber, fruit trees and bushes, and live fences. The road was an ordinary accommodation road to link up the main farm with the outlying part. In his opinion it was not a structure. The full site value represented the value in the open market in the state of cultivation in which it was on April 30th, 1909, with the surrounding properties in their then condition. That was the commercial value, free from tithe. He had not considered the question of divesting the roads and the land drainage. If the farm were divested there would be no difficulty in finding a purchaser at £16 per acre free from charges, or £11 10s. subject to charges. The views of the appellant's witnesses were not justified by the facts. The land could not be regarded as derelict. Mr. Eve approached the question as if full site value were a thing which had never existed before. There were 211 acres of grass which he estimated at £20 per acre, apart from buildings and fences, and free of charges, and 250 acres of arable, which he estimated at £12 per acre, the land being in a high state of cultivation. The best way to realise the farm if divested would be to cut it up into lots. He was quite satisfied that a speculator could buy the farm at the figure of the provisional valuation, and re-equip it with profit. It did not pay to put up expensive buildings. It could be re-equipped as a dairy farm, and show a profit. In his opinion it cost more per acre to equip a small holding than a large holding with permanent buildings. The main homestead contained 18,046 cubic feet, which, at 2½d. per cubic foot, came to £1,958. That should be sufficient for suitable buildings of similar accommodation. The cost would be £1,573 if timber was used, and timber would be likely to last as long as the building was suitable. The Commissioners claimed that neither land drains, nor roads, which amounted to £1,764, according to Mr. Eve, should be divested. That left £8,518 as Mr. Eve's estimate of re-equipment. The live fences cost £1,680 according to Mr. Eve, which left £6,838 1s. 6d. as representing the house, cottages, and buildings. That was equivalent to £14 12s. per acre, which went beyond the limit of the reasonable, especially in view of the insurance. Mr. Eve's estimate worked out at 9d. or 10d. per cubic foot, which was ridiculous. The value of the land could not be arrived at by eliminating expenditure on buildings. The existing cottages would probably not fetch more than £800. A purchaser would earmark not more than £2,000 for the value of the homestead. The value of the live hedges worked out, according to Mr. Eve, at £3 7s. 6d. per acre, which was one-sixth of the total value. For natural shelter a purchaser could plant conifers. The sporting rights were deducted from the agricultural value in accordance with Sections 41 and 7, on the assumption that the land was offered for sale in the open market, its use being limited to agriculture. It did not include tenant-right, and had no fiscal significance.

Cross-examined : The practice of the Commissioners was to take the unit of occupation and find the total value and site value. One found the value of the whole unit of occupation, and then found the value of the unit of occupation under full site conditions. He first made inspection after the service of the re-amended provisional valuation, he thought, after March 10th. The alteration in the figures had been made before his valuation. In the figures £4,620 no allowance was specifically made for timber. If full site value must be ascertained by deductions from gross value, the value attributable to some of the trees should be greater than the commercial value of the timber. He did not make a field to field valuation, as the total value was not disputed. He thought a possible full site buyer should make a field-to-field valuation. The farm was worth a gross rent of £540 per annum, equal to 23s. per acre, and a net rent of £402, equal to 17s. 2d. per acre, deducting £66 16s. 7d. for tithe, £16 6s. 10d. for land tax, £1 0s. 8d. fee farm rent, £54 repairs and insurance. He had not arrived at a full site annual rent, though he thought it was possible to do so. In his opinion a purchaser would give a higher number of years' purchase for the land divested than he would for the land with buildings on it. He thought it would be possible to farm this land without buildings on it, though buildings would be necessary somewhere. He thought Hunter was probably getting the best out of the farm. He thought the cowhouse for sixteen cows was wasteful. He would suggest economies in the housing. He did not criticise the big cowhouse, though he thought that a cowhouse quite suitable for fifty-two cows could be erected for £520. That assumed a brick building, and it would be 30 per cent. cheaper with timber double walls. All the figures of his dimensions were down to the ground line. The farm was not unfavourably placed for obtaining labour. He had valued the cottages on the farm at £800. One might expect to build nine cottages for £160 each. Under the Stevenage building bye-laws the old cottages could not be put up at all. The farmhouse afforded more accommodation than Hunter required. The accommodation must be dependent on the requirements of the individual. He thought a farmer would discount the value by the amount he had to spend on the house. Perhaps he could put up a house for £750. At Stevenage Lodge Farm the accommodation could certainly be put up for less than that amount. He would take it that the farmer did not live there. Boxfield Farm was a substantial holding, and the total accommodation could be rebuilt for £1,000. He had never found land which could not be sold without buildings. A purchaser would consider that he would require about 6,000 yards of fences. The best would be quick set, but he himself would not put up quick. The speculator would put up the cheapest at 6d. per yard. He would put up posts and wire fences at 10d. a yard. Quicks could be purchased and planted at 3d. a yard, and a guard-rail at 1s. a yard. The Commissioners did not consider the unexhausted manures in the total value, though the permanent effect of the manures was taken into consideration. He did not think that manures put in the previous year would affect the value of the land. If land drains had contributed to the value of the land they would be taken into consideration, as would any matters permanently affecting the

value. He could conceive that a certain proportion was taken for the buildings, and that assessable site value was arrived at as a balance. One road on the farm was a good hard road, but essentially a private accommodation road.

Re-examined: It would be open to the purchaser to deal with the divested land in any way. This farm would certainly not be re-equipped in this way. The effect of consistent good farming was patent to the valuer, and was taken into consideration. He had given the timber a commercial value, but not a shelter value. In such a case as this the commercial value was greater than the shelter value.

H. M. Jonas said he had made a valuation of the farm, not knowing the figures of either party. He estimated the value of the property now in the open market at £10,500, and the total value on April 30th, 1909, at £10,000. The gross annual value he put at £532; and, deducting £121 for charges, repairs, and insurance, that left a net annual value of £411, which, at twenty-five years' purchase, made £10,275. Adding the timber, less the cost of enfranchisement, made the total value £10,477. On an acreage basis of £21 per acre, adding the timber less the cost of enfranchisement, it worked out at £10,120. The gross value he estimated at £11,945, and the value divested, subject to tithe and land taxes, at £12 per acre, equal to £5,616. Taking the assessable site value from the total value, the value attributable to the houses, buildings, &c., was £4,384, being £497 for timber and fruit trees, £290 for hedges, and £3,597 for house and buildings. A very small expenditure on a shelter shed would be worth more than the trees for shelter. These deductions were more than sufficient. He put the annual value of the house, buildings, and cottages at £100, and that, at twenty-five years' purchase without repairs, was £2,500. His valuation for agricultural purposes was £9,755, *i.e.*, the total value less sporting rights. The value of the farm was its agricultural value, and it had no other. In estimating the cost of reinstatement, he had preferred to follow the report of the Committee on Small Holdings rather than his own experience. Allowing £3,900 for the house, buildings, and cottages, £220 for the yard, fences, walls, drainage, and water supply, and £620 for the hedges, that came to about £10 per acre; but he thought that £3,510—*i.e.*, £7 10s. per acre—was sufficient to equip this farm. He found that the average cost of wooden buildings varied from 2d. to 2½d. per cubic foot, and the average cost of 9in.-brick was 2½d. per cubic foot. He had erected 14-in. brick buildings at 3½d. per cubic foot, with granolithic floors and fireclay mangers. The most recent cottages he had erected cost 4½d. per cubic foot. He had never included the tenant-right in making a valuation for mortgage of the owner's interest in fee simple.

Cross-examined: He thought there were many people who would buy farms in full site condition. His gross value was £25 per acre, and the full site value £16 per acre. At his price the speculative purchaser might be eliminated. He thought he could find a farmer who would take the farm divested at £16 per acre. The grass land would be useless till he got his fences up, and he would, of course, suffer inconvenience. He would have to fence between his grass and adjoining owners, between his grass and the roads, and between his grass and arable. On April 30th,

1909, he would have to hire housing for his cattle and horses till he got his buildings up, and it would be very awkward for the first twelve months. He would lose his hay harvest, and would have to hire horses and machines. The farmer would discount his price to some extent owing to the inconvenience. It would be ten or twelve years before he could get shelter from any timber. He allowed 8,270 yards of hedges round the grass lands, and next to the high roads, some at 2s., some at 1s. 6d., and 2,070 yards at 1s. He considered that the farm was being farmed in the best manner, and the buildings were not in excess of requirements. He had put up a cottage for £150, but not less. Surrounding owners might buy the farm divested.

Re-examined: He thought the whole question of fencing had been given too much importance. Mr. Eve's estimate worked out at a rent of 5½d. per acre per annum for the land.

Hugh Kemsley said he made a valuation by instructions on April 10th, 1913. The farm was not outlandish, and the house was suitable for the holding. The total value he put at £10,000, or £21 per acre, with possession, but subject to tenant-right valuation. He thought the farm would let at £527, *i.e.*, 22s. 6d. an acre. Deducting £115 for repairs, &c., left a net rent of £412. He had not valued the timber separately. The full site value, on the Commissioners' basis, he estimated at from £15 10s. to £16 per acre, free of charges. The land could be used as a dairy farm, and as such was very well equipped, but if it was in full site condition he did not think it would be equipped as it was now. There would be plenty of purchasers for parts of the farm, and no difficulty in selling fields without fences or trees. The hedges on Chells were of much less importance than on most farms. He considered that at most 976 rods of hedges need be reinstated, which would cost £244 at 5s. a rod for a post-and-wire fence.

Cross-examined: He did not pretend to a detailed knowledge of the land immediately around Chells. He thought that if Chells were divested it would be absorbed by adjoining owners, and not re-equipped as one farm. He did not think that in 1909 equipped land could be bought east of Chells at £16 per acre, free of tithe. He had not gone into any detailed scheme of re-equipment, as he did not think the hypothetical purchaser would do so until he had tried to deal with the land some other way. He knew that many farmers were buying land as an investment, and not to farm themselves. He thought 17s. a rod was a good deal too much for a quick hedge, ditch, and rail.

John Cawter, superintending valuer for the district, said that the alterations in the provisional valuation were due to him. He put the annual value at £515, the deductions at £110 13s. 9d., the net rent at £404 6s. 3d. The market value here was £20 to £25 per acre. He fixed the full site value at £7,488—£15 10s. to £16 per acre. He had been agent for a farm in the adjoining parish, which was practically a full site value farm very much like this one. In selling by auction, he would advise a reserve of £15 10s. to £16 per acre. He was convinced that a rent of 12s. 6d. per acre could be obtained for the farm divested, and thought it would realise £7,300 in the open market.

Cross-examined: The farm was inspected before the first provisional

valuation, and the figures would be submitted to the district valuer. The district valuer could not inspect all the properties in his district. He had an idea how the difference was arrived at. [Here Mr. Allen called for the field book dealing with the deductions in the first provisional valuation. Mr. Kingdon refused to produce it.] He first saw the farm in October, 1912, and he knew then that there was an objection to the difference. He did not think the farm was inspected between the first and second provisional valuations. He thought Mr. Wood went to the farm in October. When the matter came before him he very soon decided that the difference was inadequate, though it was true that no change in the difference was served till March 10th, 1913. He communicated with Mr. Eve on November 1st, and the impression on his own mind was that Mr. Eve did not want to meet him with a view to an arrangement. In full site value he confined his mind to the particular unit of valuation. He had in cases taken a big block of land, and taken an average full site value. He did not think that Chells could be farmed as a whole with Finch's farm. When he valued he valued the fee simple in possession, not subject to any lease. He valued grass sown by the tenant, failing information to the contrary, but he did not value anything for which the tenant had a right of compensation. In ninety-nine cases out of a hundred they did not know whether fields had been drained or not. He would value perennial sainfoin in so far as it affected the surface. He had valued the wood in the agricultural value.

Re-examined: They did not include crops, unexhausted manures, or tillages in their valuation. Agricultural value was the market value, restricting the use of the land to agricultural purposes.

Mr. Kingdon, summing up for the respondents, said that the first question was a question of value, and one for the Referee. In estimating the full site value he must keep the total value in mind. He submitted that the total value in 1909 was quite £10,000, without the tenant-right. In 1886 Mr. Inns gave £8,250 for the farm without the tenant-right or timber, and sold it for £500 more to the appellant's father. Since that time a period of agricultural depression had passed away, and the value in 1909 must have been higher than in 1886, as new buildings had been put up, three cottages had been built, and 100 acres had been laid down in grass. Mr. Eve's valuation in 1910 was quite wrong, unless it was made under special conditions. There was always in valuation room for a large difference of values. He submitted that Mr. Smith's evidence was unworthy of consideration. No buyer would spend £1,600 in putting up fences, and a shed could be put up for shelter. A purchaser could sell off portions of the farm. The difference between the full site value and the assessable site value depended in this case on the liability of the land to tithe. To say that the land had a capital value of only about 3s. an acre was to challenge the ridicule of the world. Secondly, he contended that neither the land drains nor the roads were structures. The drains of a house were undoubtedly structures, but the drains of a field were not; and, even if they were, they were not appurtenant to, or used in connection with, the house. They had nothing to do with the house. In a conveyance of the house to "A" and of the land to "B," the land

drains would go to "B." (Conveyancing Act, 1881, Section 6 (1).) The words "used in connection with" involved a close interdependence. On the meaning of the word "structure," Mr. Kingdon quoted *L. C. C. v. Pearce* (1892), 2 Q. B., 109; *L. C. C. v. Humphreys* (1894), 2 Q. B., 755; *Venner v. McDonell* (1897), 1 Q. B., 421; and *Coburg Hotel v. L. C. C.*, 51 L. T., 450.

The third point was the value for agricultural purposes under Section 26 (1). The appellant said that to the ordinary value must be added the tenant-right and the value of the sporting. He submitted that the Referee had to consider the use restricted to agricultural purposes, which were defined in Section 41, and in that there was no reference to sporting value. It was perfectly clear that sporting value was not included. The proviso in Section 7 was not of general application. The value in Section 26 (1) was to be found merely for statistical purposes, and no fiscal consequences whatever flowed from it. It would be useless to include tenant-right for statistical purposes, and it was certainly not meant to be included.

The fourth point was the question of allowances under Section 25 (4) (d). He did not propose to deal with the tenant-right at this time, as the case must go before the Courts, but he submitted that it was not included in the total value, either in fact or in law; and if it was not included it could not be taken off, not being a part of the total value. The seeds, &c., were an integral part of the land, and to say that they were personal to the owner was ridiculous. The whole scope of the Act was to take the burden off the man-made things and put it on Nature's contribution.

Mr. Allen, for the appellant, said that the full site value was nonsense, but it was statutory nonsense, and therefore it would be necessary for the Referee to find it. Values unknown before to practical men were ridiculous. In this case the Commissioners had had to amend their duties by over 100 per cent., and that showed the difficulty of finding values, and the danger of valuations not being checked by the district valuer. They had not seen the man who made the first valuation, or the district valuer who signed it, and no document showing how the first valuation was arrived at had been put in. He suggested that a valuation like that of Mr. Eve, who was acting for both parties, was the best possible kind of valuation; and if to that were added the value of the cottages and of the tenant-right, one arrived at a figure close to the total value of the provisional valuation. That went to prove that the valuer had included tenant-right in his figures. The main issue in the case was the difference between gross value and divested value. The Commissioners' idea of splitting up would change the whole configuration of every unit of occupation, and give a fictitious, inflated full site value for every farm. This farm was not suitable for small holdings, and Mr. Jonas had said that the farmer who bought it would be put to great inconvenience. He certainly would not give £16 an acre, as the Commissioners maintained, for the divested farm. The equipped farm had been offered to Mr. Smith's father-in-law at £16 10s. per acre. Mr. Thomas had said that Hunter was getting the best out of the farm, and that the buildings were not excessive, but Counsel asked the Referee to say that Mr. Thomas's esti-

mate of $2\frac{1}{2}$ l. per cubic foot to erect buildings was much too low. A buyer of a full site proposition would discount his price by the amount it would cost him to put up new buildings and by a reasonable profit on his outlay, and he would consider the building bye-laws of the district. Mr. Crawter would not disclose his system of valuation, and no local people had been called by the Commissioners to say that they would give the Commissioners' price for the farm divested. With regard to the tenant-right, they were valuing the fee simple in possession, not subject to any lease. In an ordinary conveyance the right to unexhausted manures would pass with the land. A mortgagee entering into possession would take everything. Growing crops were an actual interest in land. (*Ex parte National Mercantile Bank in re Phillips*, 16 Ch. D., 101.) If the tenant-right were included in the valuation, could it come off, under Section 25 (4) (d), as something personal to the owner? (*The Commissioners of Inland Revenue v. Walker*, S. L. R., 1913, per Lord Salvesen, 478.) His argument as to the inclusion of tenant-right in the total value applied to its inclusion in the agricultural value. With regard to the sporting value, Section 7 specifically directed that sporting value was to be treated as value for agricultural purposes. For the purpose of undeveloped land duty the Commissioners said that sporting rights were not included in the valuation. Undeveloped land duty was payable on the excess of assessable site value over agricultural value. The site value included the sporting value, and that ought to be deducted in arriving at that excess. He submitted that the two roads were clearly appurtenant to the buildings. The roads were structures, and not the natural formation of the land. With regard to the land drains, the land was used in connection with the buildings, and *vice versa*, and the drains were structures used in connection with the buildings in the business of agriculture.

Award : The decision on the appeal, in respect of which the annexed notice of appeal, dated September 9th, 1912, has been given, regard being had to the amended provisional valuations of September 2nd, 1912, and March 10th, 1913, and to the letter from Messrs. Lewin, Gregory & Anderson to the Solicitor of Inland Revenue of March 13th, 1913, and the reply thereto of March 14th, 1913, copies of which are also annexed hereto, is as follows :—

- (1) The full site value should be £5,120. In arriving at this figure I have not allowed for the divestment of the agricultural drains or the two roads.
- (2) The total value of £10,000, which has not been an issue in this appeal, should include the value of the tillages, &c., mentioned in the letter of November 23rd, 1912, to the Commissioners of Inland Revenue signed by Mr. H. Trustram Eve. There should be deducted, in arriving at the assessable site value from total value, the sum of £450 in respect of the value of such tillages under Section 25 (4) (d).

DANIEL WATNEY.

Award on the appeal against value for agricultural purposes:—

The decision on the appeal of October 8th, 1912, in respect of which the annexed notice of appeal has been given, is as follows:—

The value for agricultural purposes should include the value of the sporting rights (£245) and the value of the tillages (£450).

I find this value accordingly to be £10,000.

DANIEL WATNEY.

For the appellant: William Allen, instructed by Messrs. Lewin, Gregory & Anderson.

For the respondents: F. W. Kingdon, Assistant Solicitor to the Inland Revenue.

[Appeal pending.]

Before J. GOULD DREW, ESQ., Referee, 15th, 16th, 26th, and 27th May, 1913.

DAME EMILY FRANCES SMYTH *v.* THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—AGRICULTURAL LAND—TOTAL VALUE—
FULL SITE VALUE—TENANT-RIGHT—GRASS—FINANCE (1909-10)
ACT, 1910 (10 EDW. VII., c. 8), s. 25.

Mr. Allen, opening for the appellant, said that this was the third of three test cases which had been brought to find out the exact meaning of the Finance Act with regard to the valuation of agricultural land. It covered many points, some of which involved difficult questions of law. The questions to be determined by the Referee were: (1) Was the total value of £12,625 in the provisional valuation correct? (2) Was the difference between gross value and full site value, assessed by the Commissioners at £5,691, correct? (3) Should any deduction be made for works executed and expenditure of a capital nature? (4) Should a deduction also be made for matters personal to the owner or occupier?

Total value was practically ordinary market value in the auction room between a willing buyer and seller. In this case the appellant contended that the total value had been put far too high. The rent of the farm was £504, and the total value represented more than twenty-five years' purchase of the gross rent, and, taking the average of the amounts expended on repairs during the last nine years, it represented 31½ years' purchase of the net rent. The appellant maintained that about £10,000 was all that the farm would have fetched if sold on April 30th, 1909. Since the appeal was started the tenant of the farm had died, and the farm had been relet at the same rent, and the evidence would show that that was a full rent and that no larger rent could be obtained. The farm was about seven miles from Bristol, and there was not a good approach. If the appellant's evidence that this was a full rent was right the valuation of the

Commissioners must be too high. The appellant claimed that in this case the whole of the tenant's interest ought to be included in gross, in full site, in total, and in assessable site value. Total value was the fee simple value of the land with the burdens and charges such as land tax and tithe upon it, and by Section 41 fee simple meant fee simple in possession not subject to any lease. Fee simple was the greatest interest in land that could be owned by anyone, and it included everything that was in the land and that was part of the land. He suggested that as soon as crops were in the land and manure was mixed up in it, they became a part of the land, a part of the fee in possession, and should be taken into account in arriving at gross value.

The next point, which was probably the most important, was the difference between gross and full site value. It was agreed between the parties that the farm and farm buildings, the walls surrounding the yard, the fences round the house, the drains and cesspool connected with the buildings and the house, the shed at the top of the land, the trees and fruit trees, the live fences, six cottages and their drainage, the iron fence round the rickyard, and the water supply to the house, came off. The appellant claimed in addition that the grass, the road from Norton Green to the house, the land drains, and all masonry walls and dry stone walls should be divested; also the top water supply, on the ground that the whole structure there was in law a building. A farmer would not buy a farm even under the conditions of divestment admitted by the Commissioners, and to suggest that he would give £7,650 for it, which represented nineteen years' purchase of the present net rent, was an absurd contention, for farms could be bought fully equipped for twenty-three or twenty-six years' purchase. If in addition the grass were divested, the farm would have very little value, and he claimed that the grass went under the last words of Section 25 (2), "and other things growing thereon." He claimed that all grass went, whether it had been there for all time, or had been sown by the present tenant. The respondents might argue that only cultivated things could be taken off the farm, and that even if grass were to be divested, only that was to be divested which had actually at some time or other been sown by man, but later he would cite authorities on the meaning of general words such as these, and it would be clear that all grass growing on the farm had to be taken as divested, and that at any rate grass that had been sown and cultivated by the owner or occupier at any time must undoubtedly go. This question of the grass was one of the most important issues in the case.

The remaining point was as to 22 acres sown or laid down by the late tenant in grass, for which, if the appellant took it over, she would have to pay, and which, failing payment, the tenant could plough up. In respect of that the appellant claimed a deduction of £66 under Section 25 (4) (d) as being a matter personal to the occupier. If in arriving at the capital value the Commissioners included what belonged to the tenant as far as grass was concerned, he could not understand why they excluded what belonged to the tenant as far as the unexhausted manures were concerned. He suggested that they were both parts of the fee simple of the land, and ought equally to have been considered in arriving at gross and total value.

H. B. Napier said he had been agent to the estate for twelve years. The farm was 387 acres 2 roods 27 poles. With the exception of one small outlying field the farm lay in a ring fence. There were no public highways running through the holding. It was not an easy farm to work because it was hilly, and expensive for hauling. In April, 1909, it was let at £504 per annum, and in his opinion that represented the full letting value. Since the notice of objection the tenant of the farm had died, and the holding had been relet at the same rent. For eight years ended April 30th, 1909, the average cost of repairs had been $23\frac{1}{2}$ per cent. of the gross rent. The repairs were not heavy, but they were high owing to the situation of the farm. There were no tradesmen in the neighbourhood who could be employed, and the men employed lived a considerable distance away, so that the cost of labour mounted up. In his opinion the total value of the farm was £10,300. He arrived at that by deducting from the gross rent, fixed charges and the average cost of repairs, and multiplying by twenty-five. To that he added £407 for timber, and for tenant-right £300. The 22 acres of grass were included in the £10,300, and not in the £300. If the tenant had quitted on April 30th, 1909, he could have ploughed up that grass unless he was paid what he wanted. There was no difference in the selling value of land in 1902 and 1909. In 1902 he settled the capital value of the farm with the Commissioners on the basis of twenty-two years' purchase, after deducting one-eighth for repairs, for the purpose of probate. The farm had no building value. It was being used to the best advantage at the present time. On the Commissioners' interpretation of Section 25 (2) he valued the divested site at £9 per acre, plus the tenant-right £300, making £3,700. He put the grass at £1,110. That did not represent the value to the farm, but the cost of laying down. His full site value was therefore £2,590. Divesting the masonry and dry walls, and the top pond, would make the site value still lower. His valuation of £2,590 was confirmed by what he considered would be necessary to equip the farm.

Cross-examined : He thought £504 was a fair rent in 1909. He did not agree that the farms on the Ashton Court Estate were underlet. The land drains had improved the land for hypothetical building. It would cost £4,300 to re-equip the farm. The farm was seven miles from Bristol station and five miles from the trams.

Edwin Savill said that £504 was a good rent, and it would be unwise to try and get more. The present method of farming the farm was the best. The land was exceptionally heavy, and no one would work it as an arable farm. He estimated, on a rental basis, the gross value at £10,354, and the total value at £10,238. That was the full value, and there would be no chance of getting more. Divested as agreed by the Commissioners, the full site value would be about £3,800. No one would give £7,650 for the farm in that state. There would be no income, and they would get no income until they had reinstated as far as they were able. The shelter value of the timber was something more than the ordinary commercial value. Cattle could not be satisfactorily kept on the farm if all the trees were cut down. It might be possible to find a buyer if the grass was divested, but it would be difficult. Some speculator might be found to give

say, £3 an acre for it. No farmer would touch it. The farm would not sell under these conditions at the figure at which it worked out.

In estimating the value of the grass the proper way was to take the rent of the land with the grass on it, and then form an estimate of what it would let at if the whole of the land were ploughed up. The utmost to be got for it in rent, with everything on except grass, was 12s. an acre, from which repairs, insurance, and tithe would have to be deducted. If the outgoings were put at £75 that would leave a net rent of £157, which at twenty-two years' purchase gave £3,454. Adding the value of the timber made a total of £3,854. It would cost £4,400 to reinstate the farm in addition to £2,500 for hedges. He did not consider there were too many fences. On his basis of reinstatement, divesting the grass alone brought the full site value down to £3,854. After divesting the farm of grass it would take twenty years before it resumed its present state. Taking off the grass practically divested a farm, and taking off the buildings, &c., on top of that, a minus quantity would be arrived at.

Cross-examined: Rents did not go up and down with the price of produce; if the rent were materially increased, a good tenant who would do the farm well could not be obtained. He thought it would be impossible to cut the land up.

Herbert Smith said he had made a field-to-field valuation. He put the rental value at £515, the tenant paying the rates and taxes, and the landlord the tithe and repairs. The present method of farming was the best that could be used. The land was not suitable for small holdings. There was no demand for small holdings in the immediate neighbourhood. If offered in the open market on April 30th, 1909, in his opinion the farm would have fetched £9,961, to which would be added £300 for tenant-right, making a total value of £10,261. Divested of things agreed by the Commissioners, and also of the grass, his site value was £1,000. He put the grass at £3 an acre, the cost of laying it down. There were 800 chains of hedges, which would cost £3 a chain to replace.

Cross-examined: By immediate neighbourhood he meant within a mile or two of the farm. He did not know any land on the Wiltshire Downs that was not equipped. He had allowed 12½ per cent. for repairs. A useful pasture could probably be obtained in ten years. He had known small isolated fields sold without buildings, but never a farm without equipment.

F. W. Hunt said that he had lately made a valuation of the tenant-right as at April 30th, 1909. It came to £316 1s. 6d.

Moses Smith said he had made a field-to-field valuation, and estimated the rental value at £511 10s., the tenant paying all local rates and taxes, but not tithe. He allowed for the exterior repairs being done by the landlord and the interior repairs by the tenant. On April 30th, 1909, at 23½ years' purchase, he valued the farm at £10,212, or £26 7s. per acre. He allowed for insurance, 12½ per cent. for repairs, and included the timber and the tenant-right. His deductions to arrive at full site value came to £8,595 including grass. He could not imagine the farm being better farmed. The present rent was as much as could be expected to be got, to allow a man to get a fair living. The farm did not lend itself to be split up into

small holdings. If the farm was offered as a full-site proposition it would not be suitable to run a lot of cattle on during the summer. Rents had not risen in the district. The land sown with new grass was not so valuable as the land where the grass had been down for a number of years. If divested it would take fifteen to twenty-five years to get the grass on the land in its present condition.

Cross-examined : When £630 was paid as rent in 1894 he believed there was an allowance of 20 per cent., and when it was reduced to £504 in 1896 he believed the allowance was still made.

W. Anker Simmons said his valuation for sale in the open market on April 30th, 1909, was £10,152. Divested of everything, including the turf, £1,550. Its best utility was its present use. He would not look at the farm for small holdings ; it was not adaptable for it in any way. In February he made a valuation of what the buildings were worth to the holding. He estimated them at £4,150. The full site value with the grass on would be about £7 10s. per acre ; it might make £8.

Cross-examined : He had no local experience of this estate. He valued the turf as an improvement to the holding. Things at present were a little better than in 1896. There was an increased demand for land, but he could not explain it. His firm had to do with some 70,000 or 80,000 acres, and only on three estates had the rents been altered.

A. G. Thomas said that in 1894 the late Mr. Branch was allowed a rebate of $7\frac{1}{2}$ per cent. of the £630. In the second year the rebate was 20 per cent., and was then made permanent, making a rent of £504, from which there was no rebate. When Mr. Branch died, his son took the farm at the same rent without a rebate.

Mr. Kingdon said the first question for the Referee was whether the gross and total values were correct. That point really turned on whether the rent which had been paid for some time past was fair, whether it really represented the value of the land. It could not be disputed that, after making proper deductions, twenty-five times the fair economic rent was proper agricultural value. In 1894 the farm was let to Mr. Branch for £630. He was allowed $7\frac{1}{2}$ per cent. of that £630. The second year he got a rebate of 20 per cent., reducing it to £504. Those were times of agricultural depression. In 1896 he got a new lease, and it stereotyped the reduction, making a rent of £504. The question was whether the rent after all those years of good farming was a fair rent on April 30th, 1909. He submitted that it was not a fair rent, because there were plenty of people who would be prepared to pay a higher rent than £504, and give guarantees to keep up the standard of farming. With reference to divested value, Mr. Kingdon said that was after all not far removed from the sale of land without either fences or buildings or trees on it. The Referee had to consider, not the question of re-equipment in the identical way in which the farm was equipped, but the various ways in which the man who was considering whether he would buy the land would consider it might be developed.

The first point on the question of full site value was the divestment of grass. There was the question whether in arriving at full site value grass was to be divested under Section 25 (2). The second question was the

value attributable to the 22 acres, and so on; and the third question was, if divested, what was the depreciation in the land by reason of the divestment of the turf? The main point was whether grass was included in the closing words of Section 25 (2): "Other things growing thereon" must be read as *ejusdem generis* with the things that had gone before, the three specific things, growing timber, fruit trees, and fruit bushes. (On the *ejusdem generis* rule he quoted *Sandiman v. Breach*, 7 Barnewell and Cresswell, 96; *Clark v. Gasharth*, 8 Taunton, 431; *R. v. Hodges*, 1 Moody and Malkin, 341; *Reg. v. Overseers of Neath*, L. R., 6 Q. B., 707; *Casher v. Holmes*, 2 Barnewell and Adolphus, 592; *Johnson v. Edgware Railway Company*, 35 Beavan, 480; *Reg. v. Portugal*, 16 Q. B., 487; *Reg. v. Justices for the West Riding* (1900), 1 Q. B. D., 291; *Larsen v. Sylvester* (1908), A. C., 295; Maxwell's *Interpretation of Statutes*, 5th edit., p. 337. Grass was so universal that, if the Legislature had intended it to be taken up it would have been specifically enumerated. Grass did not lend itself to specific divestment.

The term tenant-right was misleading. It might extend to a great many things, and might differ enormously in the character of the things included and in the nature of the claim. He restricted the term in this case to the allowances as between an incoming and outgoing tenant, which were connected with the continuity of the business of agriculture. (*Stafford v. Gardner*, L. R., 7 C. P., 242; *Bradburn v. Foley*, 3 C. P. D., 129) Crops passed as personal estate. (Halsbury's *Laws of England*, vol. 14. p. 218.) The value of land could not be inflated by what was the business of the tenant. One had got to arrive in the first instance at the fee simple value. The fee simple value was the right to the profits of the land in perpetuity from the day it was valued. That could be compared with the value of an interest in the land, but if they took the fee simple value and inflated it by tenant-right, it would be no longer the right to profits of the land in perpetuity, but to that and something else, which was totally dissimilar, and did not serve for the purposes of comparison hereafter.

The sums paid to the tenant on quitting were not paid for an interest in land at all, and his right was a mere pecuniary claim. (*Mayfield v. Wadsley*, 3 Barnewell and Cresswell, 357; *Hallen v. Runder*, 1 Crompton, Meeson and Roscoe, 266.) Tenant-right was not in total value, and therefore could not come off. Another question was the difference between gross and full site value, which involved the right basis of divestment. The things in dispute were: A road to the house, the masonry under the pond, and the dry-built stone walls. The road could not come off, because it was not a structure. They had got to take the words which were common terms in their ordinary sense. The normal and natural sense of building was something covered by a roof. (*Moir v. Williams* (1892), 1 Q. B., 264.) He submitted that the road could not be held as a building, or a structure, and therefore it could not be divested. The same applied to the pond. (*Thompson v. Sunderland Gas Company*, 2 Exch. D., 429; *London County Council v. Pearce* (1892), 2 Q. B., 109; *Venner v. McDonnell* (1897), 1 Q. B., 421; *Reg. v. Overseers of Neath* (*supra*)). The walls were structures, but they did not come off, inasmuch as they were not appurtenant to the buildings. No proof had been given to the Com-

missioners as to claims under Section 25 (4) (b) and (d). As to the 22 acres of pasture, it could not be expected that a valuer would take into consideration that the tenant might plough up the land if the landlord did not pay him £3 per acre. It could not be considered as tenant-right. A double reduction had been claimed. In addition to the claim for the grass divested there was a claim of £66 in respect of the 22 acres, but if the grass was taken off the landlord would be in the same position as if the tenant had ploughed up the 22 acres, so how could the appellant substantiate his extra claim?

C. J. Howell Thomas, deputy chief valuer of the Inland Revenue, said that the rent of £504 was a low one. Since 1896 there had been a recovery of 10 per cent. in the value of such a property. Assuming that the rent of £504 was a fair rent in 1896, he would now expect to find that the fair rent for the whole would be between £550 and £560 per annum. His valuation, upon a rental basis of £527, excluding the cottages and assuming the right of sporting was reserved, was as follows: Estimated annual rental, £527; less tithe rent-charge, £3 13s.; repairs and insurance, 10 per cent., say, £53 7s.; net rental, £470; at twenty-five years' purchase, £11,750; add cottages, £500; timber, £320; sporting, £150; total value, £12,720. That confirmed the figure shown in the provisional valuation, £12,625, which he adopted. The farm if divested of buildings, walls and fences round buildings, water supply to buildings, timber, fruit trees, and live fences, would realise on an average £20 per acre, or £7,753. The difference of £5,091 was much above the ordinary allowance for re-equipping a dairy farm. The figure of £20 an acre was, in his opinion, amply justified, having regard to the numerous uses to which the land might be put. It might be cut up into small holdings, for which it was admirably suited. His estimate of the cost of re-equipment was £4,150, as follows: Dwelling-house, at 5*d.* per cubic foot, £708; six cottages, £700; buildings, at 2½*d.* per cubic foot, £1,272; for draining house and buildings, £100; live fences, 1*s.* 3*d.* a yard, £1,050; allowance for timber, £320.

J. G. Peard said he had inspected and valued the farm; he estimated the values as follows: Gross value £12,840, total value £12,749, and full site value £8,685.

J. E. Tory, superintending valuer of the Western Division, gave a valuation on the basis of an annual rental of £550. He allowed £60 for repairs and insurance, leaving a net rental of £490. At twenty-five years' purchase that gave £12,250. To this he added: Sporting £150, timber £316, and right of way £25, making a gross value of £12,741. Divested, he estimated the farm would realise £7,650, leaving a difference of £5,091. In his opinion the farm would fetch more than twenty-five years' purchase. He had not included tenant-right in his valuation; he valued the land, not the crops.

Cross-examined: There was room for a difference of opinion in arriving at full site value. The buildings could be reinstated for 2½*d.* per cubic foot.

Albert Ford gave a valuation which he based on a rental value of £571; less 12½ per cent. for repairs and insurance, net rent £500, which

at twenty-five years' purchase gave £12,500. Adding £270 for timber and £100 for sporting made a gross value of £12,870. He put the full site value at £8,270, about £22 per acre. With the fences the full site value would be £9,000. The difference between full site value and gross value, £4,600, would be the cost of re-equipping the farm. The farm had many advantages, and would sell very readily as a full site proposition. He did not include tenant-right in his valuation.

H. T. Blinman said he valued the farm in the open market at £13,000. He based that upon a rental of £600, which included the sporting rights. From that he deducted £68 for tithe, repairs, and insurance, leaving a net rent of £532. At twenty-five years' purchase that gave a total of £13,000. To that he added £300 for timber, making £13,300, which did not include the tenant-right. The value of the land divested he put at £8,276. All farms were letting at much more money in 1909 than in 1896.

Cross-examined. Quite satisfactory buildings could be put up at $2\frac{1}{2}d.$ per cubic foot.

Mr. Kingdon, summing up for the Commissioners, said the evidence produced by the Commissioners showed conclusively that the rental value of the farm had considerably increased since 1896. It was impossible to conceive how a fair rent in 1896 should still remain a fair rent in 1909, seeing that the farm had steadily improved. In arriving at gross value and total value, all the witnesses for the Commissioners, in fixing the sum they stated could be got in the open market, took into account that the present buildings were not so convenient as they would be, having regard to the change of use of the farm. As to what ought to be divested, in his view, the grass did not come off, nor did the road from Norton Green to the house, because it was not a structure within the meaning of Section 25 (2). The walls of the pond were not buildings, but part of the land to all intent and purposes. The word "building" in the Act had its ordinary signification, and on the meaning of "building" he quoted the Interpretation Act, 1889, Section 3; *Reg. v. Overseers of Neath (supra)*; *Moir v. Williams (supra)*; *Bowes v. Law*, L. R., 9 Eq., 636; *R. v. Gregory*, 5 Barnewell and Adolphus, 555; *Brown v. Local Board of Health of Holyhead*, 7 L. T., 332; *Churchwardens of St. Botolph, Aldersgate Without, v. The Parishioners of the Same* (1900), P., 69; *Ellis v. Plumstead Board of Works*, 68 L. T., 291; *Wendon v. London County Council* (1894), 1 Q. B., 812; *Foster v. Fraser* (1893), 3 Ch., 158. A structure was something which was associated closely with a building. (*Coburg Hotel v. London County Council*, 81 L. T., 450; *London County Council v. Pearce (supra)*; *Venner v. McDonell (supra)*.) The words "appurtenant or used in connection with" meant only things which were part of the equipment of the house and its immediate surroundings. (Conveyancing Act, 1881, Section 6.) The walls and drains were used simply in connection with the agricultural use of the land. With regard to claims for deductions under Section 25 (4) (b) and (d), there had been no proof to the Commissioners as to expenditure under those subsections, nor had the work done improved the value of the land as building land, for it was not building land, which meant land that had a building value and was ripe for building. The appellant's claim for a

deduction of £66, under Section 25 (4) (d), for laying down 22 acres of pasture, as something personal to the occupier was untenable, as a pecuniary claim against the owner could not be part of the total value of the land. As to tenant-right it was absurd to contend that any payment which would have to be made if the tenant went out was a burden, charge, or restriction on the land. (*Mansel v. Norton*, 22 Ch. D., 769.) If the landlord sold his land with the concurrence of the tenant, who agreed to go out if he were paid the ordinary allowance for tenant-right, the sale would be of the land by the landlord, and the money paid to him would be the price of the land, whereas the money paid to the tenant would not be the price of anything which was an interest in land. If the land were sold on April 30th, 1909, there might be a change of possession and a new letting between that date and the date of completion, but if the matter were carried through between tenant and tenant the price of the land would only be what was bid at the auction, and not the money which passed between tenant and tenant.

Mr. Allen, replying for the appellant, said that the most important question was whether or not grass was to be divested in arriving at the full site value. That depended on the correct construction of the last words of Section 25 (2). In the ordinary everyday acceptance of language "other things growing thereon" would include the grass growing in a field, and the general rule in construing a statute was that words must be taken to bear their ordinary and usually accepted interpretation, unless something in the statute excluded the ordinary meaning. (*Collins v. Welch*, 5 C. P. D., 27; *Nuth v. Tamplin*, L. R., 8 Q. B. D., 247; *Hornsey Local Board v. Monarch Investment Society*, 24 Q. B. D., 1; Halsbury's *Laws of England*, vol. 10, p. 469.) Words must only be taken very charily out of their ordinary accepted meaning and construed *ejusdem generis* with particular words that went before them. (*Church v. Mundy*, 15 Vesey, 396; *Parker v. Marchant*, 1 Young and Collier, 290; *Reg. v. Payne*, 35 L. J. M. C., 170; *Anderson v. Anderson* (1895), 1 Q. B., 749; *Larsen v. Sylvester* (*supra*).) The burden of proof lay on those who tried to restrict the meaning of words, and that meaning was not to be restricted unless there was something clearly appearing on the face of the instrument that would show that there was an intention to limit the meaning. Another reason why the *ejusdem generis* doctrine could not apply in this case was because that doctrine only applied when the general words followed particular ones which were all in the same category (Maxwell's *Interpretation of Statutes*, p. 538; *Reg. v. Payne* (*supra*); *Shillito v. Thompson*, 1 Q. B. D., 12), and to say that growing timber, fruit trees, and fruit bushes, a currant and an oak, a raspberry and an ash, a gooseberry and an elm were in the same category was absurd. In all the cases quoted by Mr. Kingdon it would be found on investigation that there was in each case some good reason why the general words following the particular ones should receive a narrower meaning. If, as was admitted, there was to be a national divestment of trees, fences, and fruit bushes throughout the country, what was there extravagant in divesting the grass? Grass grew on the land equally with timber, and it had been proved that grass in the case of this farm and many others gave an

additional value to the land. It had been sown and cultivated by the industry of farmers, and ought to be taken off in arriving at full site value. To arrive at gross value the fee simple had to be valued, and fee simple was the most extensive estate inherent that a man could possess. (*Stephens' Commentaries of the Laws of England*, vol. i., p. 235.) If the tenant-right in this case were not included something was left out which was actually part of the land, namely, the unexhausted manures. The law recognised two different profits, one of ownership and one of occupation, as was shown by Schedules A and B for income tax returns, and to arrive at capital value all the interests from which profits arose had to be considered. A mortgagee taking possession would take possession of the entire interest. (*Bagnall v. Villar*, 12 Ch. D., 812.) Growing crops in the hands of the tenant were an interest in the land (*Ex parte National Bank, in re Phillips*, 16 Ch. D., 104), and therefore must be part of the fee simple. There was a liability between the landlord and the outgoing tenant. (*Bradburn v. Foley (supra)*.) In *Earl Fitzwilliam v. The Commissioners of Inland Revenue* the Court of Appeal held that the increased value of a licence must be taken into account in arriving at total value, and he submitted that that was much further from fee simple than the inclusion of unexhausted manures, which were actually a part of the land.

The appellant also contended that the road to the house was a structure appurtenant to the house. On the question of appurtenancy he quoted *Watts v. Kelson*, 6 Ch. App., 166; *Bayley v. Great Western Railway*, 26 Ch. D., 434; *Kay v. Oxley*, L. R., 10 Q. B., 360. The road was a structure and the walls and the masonry ponds were buildings. (*Long Eaton Recreation Grounds Company v. Midland Railway Company* (1902), 2 K. B., 574; *Lary v. London County Council* (1895), 2 Q. B., 577.) Any structure used in the same physical occupation with buildings would come within the words "used in connection with." (*Commissioners of Taxation v. Trustees of S. Mark's Glebe* (1902), A. C., 416.)

On the question of value in this particular case, the real dispute seemed to be on what rent the farm would have actually let on April 30th, 1909. He suggested that very great weight must be given to the fact that the agent for the property, who knew all the details of it, had in fact let the farm ever since 1896 at a rent of £504, and thought that it was a fair rent. A large part of the farm was clay, and the property could not reasonably have been expected to fetch the amount of the Commissioners' valuation on April 30th, 1909. When the Referee came to deal with full site value he had to consider one thing only, and that was, what would be in the mind of a buyer who approached the farm divested, by how much he would discount the purchase price when he knew that everything had been removed—farmhouse, buildings, cottages, fences, and trees—and that it was a bare waste.

Awarded :—

(1) That the gross value should be £11,935.

(2) That the total value should be £11,819. In this sum I have included

the tenant's interest in the unexhausted manures and tillages, and if I had not done so the gross and total values would each have been decreased by £300.

- (3) That the full site value should be £4,625. In arriving at this figure I have considered the farm as divested of (a) the grass, and (b) the road from Norton Green to the house and buildings; and I have not considered (c) the 490 yards of masonry and dry stone walls, nor (d) the works of water supply not admitted by the respondents to be divested. If I had not considered (a) the grass and (b) the road as divested, the above figure of £4,625 would have been increased by £1,332. If I had considered (c) the walls and (d) the works of water supply not admitted by the respondents to be divested, the above figure of £4,625 would have been decreased by £510.
- (4) That the assessable site value should be £4,143, and in arriving at that figure I have not made a deduction under Section 25 (4) (b) in respect of any part of the total value attributable to the expenditure upon agricultural drains and works of water supply not admitted by the respondents to be divested, but I have made a deduction of £66 under Section 25 (4) (d) in respect of the grass laid down by the tenant, and a deduction of £300 in respect of unexhausted manure and tillages as parts of the total value attributable to matters which are personal to the owner, occupier, or other person interested for the time being in the land.

J. GOULD DREW.

For the appellant: William Allen, instructed by Lewin, Gregory & Anderson.

For the respondents: F. W. Kingdon, Assistant Solicitor to the Inland Revenue.

[Appeal pending.]

Before JOHN FARRER, ESQ., *Referee*, 11th June, 1913.

J. ATKINSON-JOWETT *v.* THE COMMISSIONERS OF INLAND
REVENUE.

UNDEVELOPED LAND DUTY—POWER TO DETERMINE TENANCY—
VERBAL AGREEMENT OF TENANCY—FINANCE (1909-10) ACT,
1910 (10 EDW. VII., c. 8), s. 17 (5).

Mr. Watson said that the appeal was against two assessments to undeveloped land duty, one for 1910-11 and the other for 1911-12, in respect of the same units, viz., nine small fields, numbered 21-29, which composed Hedgeside Farm. The first assessment was for £7 15s. 3d., the second for £9 6s. 3d. The first point was one entirely of fact, namely, the

terms under which Naylor, the occupier, was holding on April 30th, 1909. His case was that Naylor was occupying under a verbal agreement of tenancy at an agreed rent of £51 18s., and if that were so, the power to determine could not be exercised so as to determine the tenancy earlier than February 2nd, 1912. The rental included some buildings, but they were a negative quantity for the purposes of the Act. The amount of the assessment was not disputed, if duty was payable. If the tenancy in existence at February, 1909, was a verbal tenancy without any condition as to notice, one year's notice would be necessary. It was suggested by the Commissioners that Naylor was holding under the terms of an agreement with Carter, the previous tenant, under which the tenancy could have been determined by six months' notice in writing by either side to expire on February 2nd as to land and on May 13th as to buildings, and in which the landlord reserved to himself "the right of selling any portion of the land at any time, and requiring immediate possession of the land so sold on payment of reasonable compensation." If Naylor had taken over under terms similar to those of Carter's agreement, the tenancy might have been determined sooner than 1912. How much sooner might depend on the meaning of Section 17 (5).

G. D. W. Douglas, agent for the Atkinson-Jowett Estates for several years up to July, 1909, said that he agreed to let the farm to Naylor in April, 1908. There was no written agreement, it was verbal. The rent was agreed at the sum paid by the previous tenant, £51 18s. Nothing was said as to notice. He did not agree to let to Naylor on the same terms as Carter as to notice. They had no right to retake in the event of selling without notice.

Cross-examined : In 1908 some tenants were subject to six and some to twelve months' notice. There was a common form of agreement in use on the estate, merely the length of notice being varied. The clause as to sale was in all the written agreements. He did not think intending tenants would know that the clause was common form on the estate. Naylor had been a tenant from 1902-6 of a different holding ; he had no written agreement. He did not think Naylor knew of the clause. Possibly 33 per cent. of the tenants had written agreements. Naylor had not said anything to him as to the terms on which Carter held. He knew of a case where the landlord sold land held under a verbal tenancy and paid compensation, but that was by arrangement with the tenant, and if the tenant had objected the landlord could not have sold. He always approached the tenant before sale even in the case of a written agreement. He would have been willing to give Naylor a written agreement, but not on the lines of Carter's agreement.

George Naylor said he took possession of the farm in April, 1908. He had nothing but a verbal agreement. He knew nothing of the previous tenant's agreement or its terms. He had not had a written agreement for his previous tenancy, and did not know there were any printed forms of agreement. Nothing was said about length of notice.

Cross-examined : His general impression was that he was a yearly tenant. He did not think he could give a year's notice at any time, but only a notice expiring on February 2nd. He knew the landlord had sold

off small plots, but did not know on what conditions. He did not think the landlord could sell part of his land without his permission.

Mr. Shaw, for the Commissioners, said that this was an estate of considerable size, on which some of the tenancies were verbal and some written. It had been desired to bring a test case on each kind of tenancy as to the power to determine, as the Commissioners' view was that probably the clauses in the written agreements were implied in the verbal agreements. By an accident this farm had been described as being held under a written agreement, and when the mistake was found out it was too late to get a case under a written agreement referred. In view of the evidence he could not ask the Referee to say that the clause as to sale was in the minds of the parties to this verbal agreement. If the other verbal tenancies were similar, the Commissioners might withdraw the assessments. He did not think this was a case where costs should be given to the appellant, as the Commissioners would not have chosen it as a test case, and the mistake as to the tenancy was not found out till May 27th.

Mr. Watson asked for costs, saying that the Commissioners had had an opportunity of satisfying themselves as to the verbal agreements, of testing them and seeing how far they were *bona fide*, and with what knowledge and understanding they were made.

The Referee held that undeveloped land duty was not payable, and made no order as to costs.

For the appellant : Richard Watson, instructed by Vint, Hill & Killick, Bradford.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before HOWARD MARTIN, ESQ., *Referee*, 20th June, 1913.

THE ECCLESIASTICAL COMMISSIONERS *v.* THE COMMISSIONERS OF
INLAND REVENUE.

UNDEVELOPED LAND DUTY—LAND LEASED BEFORE FINANCE
(1909-10) ACT, 1910—POWER TO DETERMINE TENANCY—
FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8) s. 17 (5).

Mr. Errington said that the appeal was against an assessment to undeveloped land duty in respect of property in the parish of Heston, held under three leases, all dated before the Act. The land numbered 371 was leased on May 6th, 1902, the land numbered 505 on July 31st, 1902, and the land numbered 777 on June 1st, 1905 ; and the duty assessed was, on 371, 11s. 5d. ; on 505, £18 9s. 1d. ; on 777, £37 1s. 5d.

The appellants thought that certain small portions of 777 might have a building value, and that as regards them there might be a power to determine, so, though the appellants did not admit that they had a building value, they were not appealing as to those portions.

The material clauses in the leases were as follows :—

As to 371: “The landlords to be at liberty to resume possession at any time, and from time to time, of the whole or any part and parts of the land and premises for the purposes of sale or exchange, or for making any railway, roads, or sewers, or for the erection of any kind of building whatsoever, or planting and for other purposes except for agricultural purposes as at present on giving one month’s notice to the tenants, and compensating them for all growing crops”

As to 505 and 777: “The Commissioners shall be at liberty at any time on giving one calendar month’s previous notice to the tenant to resume possession of any part or parts of the lands and premises for the purpose of sale or exchange, or for the making of any railway, roads, or sewers, or for the erection of any building whatsoever, or for the planting of trees, or for any other purposes whatsoever not being agricultural purposes for which the premises are held under these presents, the Commissioners allowing a proportionate abatement in the rent, and compensating the tenant for all growing crops. They shall also compensate the tenant for actual husbandry. If the Commissioners shall at any time resume possession of more than half the area the tenant shall be at liberty to determine the lease on twelve months’ notice.”

These clauses were not powers to determine the tenancy, but were rights of re-entry, limited both as to purpose and condition; they were also limited by the landlord having conditions imposed on him if he exercised the right. The appellants’ first point was that “power to determine” did not apply to powers of re-entry; the power was quite precise in its terms and was frequently met with in all kinds of leases; it must be unfettered, not subject to any limitations or conditions. On breach of a covenant, *e.g.*, to assign, a landlord’s power to re-enter arose, but it would not be practicable to find out whether a tenant had broken a covenant and given rise to power to re-enter. A power to re-enter was not a power to determine; if the tenant refused to go the landlord had to bring an ejectment action, and then the judgment might determine the tenancy. There was an instance of power to determine in the case of the land 505; there the tenant had that power. Section 17 (5) only applied to cases where the landlord could give a notice which *ipso facto* determined the tenancy of the whole or any part of the holding.

The second point was that, even assuming the section to apply to powers of re-entry, it did not apply to powers conditional or limited. If particular terms or conditions were imposed on the exercise of the power, it was not open to the Inland Revenue to say that the power should be exercised. In this case the power was limited to certain purposes and limited by conditions laid on the landlord. The landlord could only exercise the power when he could show that he had a *bona fide* purpose of applying the land to the specified purposes. (*Russell v. Coggins*, 8 Vesey, 34; *Doe v. Abel*, 2 Maule and Selwyn, 541; *Johnson v. Edgware Railway Company*, 35 Beavan, 480.)

Mr. Johnson, agent for the appellants, said that the land had been under his management. There had been no application for sale. He did not

think the land was ripe for building purposes, and would not advise making roads or sewers, or planting trees. Its only use was for agricultural purposes. A certain amount of building value was put in the provisional valuation, but the building values were deferred.

Cross-examined : There were some boards up, which had been up for years. If an offer were made to the landlords, there was nothing to prevent them selling.

Mr. Shaw, for the respondents, said that in all the leases the words were "the landlord to be at liberty to resume possession," and if the landlord had power to resume possession, the resumption determined the tenancy either of the whole or part ; it all depended on the volition of the landlord. An action for ejectment would equally arise in the case of a landlord having power to determine if the tenant refused to go. The landlord had power to determine without showing cause ; it could be for any purpose other than an agricultural purpose. There must be a distinction between such a covenant as this and a covenant such as "where the landlord shall require the land" ; in the latter case it lay on the landlord to show that he, *bona fide*, required the land for the specified purpose.

The Referee : If you admit that he must show that he wants the land for building, why should he not have to show that he has some other *bona fide* purpose ? The question as to whether there is a power to determine is one exclusively between landlord and tenant.

Mr. Shaw : The question of the landlord's intention was immaterial. The cases quoted depended on particular words, "want," or "require," and "desire." It might be absolutely improvident and foolish for the landlord to build or plant in this place, but if he chose he could do it. If a man had power to purchase land at a certain price and the land deteriorated in value, it might be certain that he would never do it, but he still had the power to do it, for it depended entirely on himself. Payment of compensation did not affect the question ; it was not a condition but a consequence of the exercise of the power.

Awarded : That it has not yet been possible to determine the tenancy under the power in the leases, and that the land is not therefore liable to be assessed for the payment of undeveloped land duty.

For the appellants : F. H. L. Errington, instructed by Milles, Jennings, White & Foster.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before H. M. COBB, ESQ., Referee, 23rd and 30th June, 1913.

CANON FORAN AND ANOTHER *v.* THE COMMISSIONERS OF INLAND
REVENUE.

PROVISIONAL VALUATION — LAND WITH SUBJACENT MINERALS —
VALIDITY OF FORMS I. AND IV.—MINERALS RETURNED AS OF
NO VALUE—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., C. 8),
SS. 23, 25, 26.

Mr. Hewitt said this was an appeal against a provisional valuation on the grounds that the figures were too low and that the minerals were treated as of no value. He asked the Referee to allow certain amendments in the grounds of appeal to the effect that Forms I. and IV. served on the appellants were invalid, and that the appellants had not been required to make a return as to the minerals.

Mr. Shaw said that he objected to the notice of appeal in so far as it referred to minerals, and to the Referee dealing with any question of minerals, as the provisional valuation applied to the surface only, and by Section 23 (2) minerals were to be treated as a separate parcel of land. In the return made by the appellants no value was attached to the minerals, and the statutory consequence was that they must be treated as of no value. It was not an appealable matter within Section 33 (1), as it was not a determination by the Commissioners. The appellants had issued a writ claiming that the forms were invalid; if the forms were invalid, no valuation of the minerals had been made, and the appellants could not appeal against a valuation that had not been made; if the forms were valid, the consequence was a statutory consequence, and not a determination of the Commissioners against which an appeal would lie. There was nothing in the Act to make the Commissioners value the minerals before or at the same time as the surface.

Mr. Hewitt said that the Commissioners had never suggested any way of settling the question except before the Referee. The appellants would argue that Section 23 (2) did not apply in this case having regard to the form and the return; the Commissioners had determined that it did apply, and it was from that that the appellants appealed. It was part of the Commissioners' case that Form IV. as served and the return required referred to the land in its entirety, surface, and minerals; they made their valuation on that form and return, and in their valuation they intimated that the value put on the minerals was nil. They had refused to make a substituted site value for the minerals on the ground that the site value was nil, and that the time for claiming substituted site value had elapsed. The appellants had asked the Reference Committee to extend the time for returning Form IV., but the Committee decided that they had no jurisdiction, and the appellants came to the Referee to decide whether the Commissioners were right in saying that Section 23 (2) applied or not.

The Referee decided to hear the case.

Mr. Hewitt said that the property in question was Appleton Farm, equidistant from Deal and Dover, and about two miles from the sea. Its

area was 223 acres 0 roods 21 poles, and there was also a cottage and garden of 18 perches close to the farm. A railway ran across it, and there was a station about half a mile away. In 1882 it was valued (including a cottage and shop since sold for £337) at £9,000, and on this £5,000 was lent on mortgage. In 1885 the mortgage became vested in the appellants. In 1897 it was valued at £4,600. In November, 1897, the appellants foreclosed, having in June made a provisional contract to let the farm to Kelsey for seven years at £130 per annum for two and a half years, and £145 per annum after, which lease was sanctioned by the Court on June 27th, 1898. In 1898 the cottage and shop were sold, and £355 were spent in improvements, fencing, and grass seed. In the lease to Kelsey the minerals were expressly reserved. In 1904 the farm was let on a yearly tenancy at £150, the tenant repairing and the landlord finding the materials in rough. In June, 1906, there was a conditional contract to let to Prebble for fourteen years from October 11th, determinable at the end of seven years, at a rent of £150, reserving the timber and minerals. On January 16th, 1907, the appellants were offered £25 a year for three years for an option to take a lease of the minerals. On June 9th, 1910, an offer of £4,000 was made for the property, which was increased on June 17th to £4,500, and on July 5th to £5,000. In July, 1910, two firms were instructed, one to value the surface, the other the minerals, and in August the surface apart from the minerals was valued at £4,300. The present value of the minerals was not more than from £5 to £6 an acre in excess of the agricultural value. On September 13th, 1910, Forms I. and IV. were served, and only allowed thirty days from September 10th for the return. On September 19th a colliery company offered £5,500 for the property. On September 28th the appellants asked the Commissioners to allow the return to stand over pending the decision of *Dyson v. Attorney-General*; the Commissioners refused, and under pressure the return was made on October 14th. Question (i) in Form IV. voided the whole form if served on the owner in occupation (*Dyson v. Attorney-General* (1912), 1 Ch., 158), and the Commissioners, who said that the form was applicable to surface and minerals, in asking about minerals, were asking about something in the occupation of the owner. The form was very misleading; in big letters was printed "additional particulars which may be given, if desired," and below that came Question (v) "Nature, and estimate of the capital value of any minerals not comprised in a mining lease, and not being worked, which have a value as minerals." On November 18th, 1910, the offer of £5,500 was accepted; the contract, expressly including the minerals, was signed on December 30th, and conveyance took place on March 29th, 1911. On the same date the appellants wrote to the Commissioners telling them of the sale. On August 23rd, 1911, the provisional valuation was served, showing gross value £3,400, total value £3,150, full site value £2,860, assessable site value £2,610, value for agricultural purposes £3,150. The total value, including the cottage and garden, was £3,270. On September 19th, 1911, the appellants asked for leave to amend their return, and their letter was unanswered for seven months. On January 18th, 1912, the colliery company conveyed the surface to Prebble for £3,175. He contended that the appellants had

never been asked to make a return of minerals, as the form referred to land in the occupation of Prebble, and the minerals were not in his occupation.

Ernest Watson said that all except 26 acres was pasture, good medium land, in very fair condition. He estimated the rental value at £192 10s., less outgoings £25 10s., £167 net; at twenty-five years' purchase £4,175, plus shooting £150, making the total value £4,325. The other values he estimated at: Gross value £4,575, full site value £2,800, assessable site value £2,550, value for agricultural purposes £4,325.

Cross-examined: In the conveyance to Prebble there were no restrictions on letting down the surface. Land values were slightly higher in 1912 than in 1909. He had not dealt with the minerals in his valuation.

Re-examined: Covenants such as those in Prebble's conveyance might make a difference of £5 an acre in the price. Laying down pasture had increased the value.

Edwin Lawrence Peel said that in 1901 he made a survey and report on the farm; it was then nearly all grass, in poor condition. In July, 1910, he made a valuation of the surface. Prebble had improved the land, and £150 was a low rent. He estimated the selling value at £4,300, including the cottage. He took twenty-eight years' purchase, considering that there was a value over and above the agricultural value, apart from the minerals.

Cross-examined: His valuation included sporting, and would not be so high for purely agricultural purposes. He thought that in 1909 it would have realised his figure at auction. His net rent was £163. If the coal were reserved the land would not be worth so many years' purchase as if it were free.

Thomas Wachter said the farm was in very fair condition. His estimate of total value was £4,850. He thought the value of the minerals might fairly be put at from £10 to £12 an acre.

Cross-examined: His valuation of surface and minerals came to £7,080. He thought £5,500 was a low price. His valuation was at £1 an acre, less £30 tithe and repairs, at twenty-five years' purchase.

Benjamin G. Turner, district valuer for East Kent, called for the Commissioners, said that in May, 1911, the house was in a fair state, but the buildings were in a deplorable condition. About 30 acres were arable, the rest pasture. His valuation was: Gross value £3,400, viz., gross rent £150, less cottage £5, insurance £1 10s., and repairs £2 10s., at twenty-five years' purchase; total value £3,150; full site value £2,860, viz., rental £116 8s. 6d., less £2 repairs, at twenty-five years' purchase; assessable site value £2,610; value attributable to buildings £540. The pasture was third rate, and it would be impossible to get 17s. 6d. per acre for it. Twenty-five years' purchase was a very full figure. His valuation ignored the minerals; it was of the surface only with lateral and vertical support.

Cross-examined: Restrictions as in this lease would not make a purchaser pay less. It was ridiculous to suggest that the farm had a prospective building value. One could not get £10 a year for the sporting. The land did not increase in value between 1897 and 1909. He did not think £5,550 was a cheap price for the land.

F. T. Honeyball said the buildings were very poor, and the land was practically all light loam on chalk. The pasture was poor in 1909; it had been improved by Prebble, but was still third class. £150 was a fair rent; deducting £23 10s., that gave at twenty-five years' purchase a gross value of £3,162 10s. He estimated the total value at £3,062 10s., full site value at £2,625, and assessable site value at £2,525. Some of the pasture was not worth more than 7s. 6d. per acre; about 20 acres were worth £1; the average would be 12s. 6d., or 13s. per acre. He was confident it would not fetch twenty-eight years' purchase, as it had no value apart from agricultural value.

Cross-examined: The farm was conveniently situated. In 1910 the fences were very bad. He did not think there was any building value. If a colliery were opened near the farm he thought it would depreciate the value of the farm.

Henry Hayward said he had valued it in 1897 at £4,600. In June, 1905, he suggested a reserve price of £3,360. In May, 1913, he valued it as at April 30th, 1909, as follows: Gross value, £3,184, viz., rent £150, less deductions £22 12s. 10d. at twenty-five years' purchase; total value £3,084, assessable site value £2,681. Apart from minerals it would not have fetched more than £3,084.

Cross-examined: In 1882 he advised that it was worth £9,000. Things were better in 1909 than in 1897. None of his valuations dealt with the minerals. Twenty-eight years' purchase was too high. His opinion in 1897 must have been wrong. In 1882 the rent would be about £335, in 1897 about £200.

Mr. Shaw said that if the question of minerals had not been in the case it was very doubtful whether the Referee would have been troubled with the present question, the agricultural value of the land. The Commissioners' witnesses did not agree that the land had a further potential value. It was clear that there had been no valuation of the minerals; the Commissioners maintained that, no estimate of the value of the minerals having been given on Form IV., there was an obligation to treat the minerals as nil. The provisional valuation related to the surface, with support but without minerals which, by the Act, must be separately valued. The evidence of the Commissioners' witnesses as to the value without the minerals was very strong, and should carry great weight, as they were all well acquainted with the land, whereas all the appellants' witnesses differed in the rent they took. There was a full compensation clause in Prebble's conveyance, so that the restrictive covenants made no difference.

Mr. Hewitt said that in 1897 Hayward put the value at £4,600; since then things had improved, and £400 had been spent in improvements, yet he now put it at £3,100. The appeal was against the decision of the Commissioners that a valid requisition had been made on the owners as to surface and minerals, and that owing to the return the minerals must be treated as nil. It was a question of construction. It was playing with words to say that there had been no valuation of the minerals, as the Commissioners would make no further valuation unless compelled. If the minerals were to be treated separately, a separate form should be served. This form referred to land in the occupation of Prebble, who

was not in occupation of the minerals ; it was invalid, and grossly misleading. The appellants had never been properly required to make a return as to minerals ; therefore there had been no default, and they were entitled to make a return.

Awarded : Gross value, £3,705 ; total value, £3,455 ; difference between gross value and value of the fee simple of the land divested of buildings, trees, &c., £805 ; full site value, £2,900 ; assessable site value, £2,650.

For the appellants : E. P. Hewitt, K.C., and William Allen, instructed by Roy & Cartwright.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

[Appeal pending.]

Before DANIEL WATNEY, Esq., *Referee*, 24th June, 1913.

W. R. DAVIS AND A. A. ROLLASON *v.* THE COMMISSIONERS OF
INLAND REVENUE.

PROVISIONAL VALUATION—FULL SITE VALUE—FINANCE (1909-10)
ACT, 1910 (10 EDW. VII., c. 8), s. 25.

Mr. Allen said that the appellants were the executors of W. Davis, whose will was proved on November 20th, 1911. The appeal was against the provisional valuation of 3 and 4, Edgbaston Street, Birmingham. The valuation was served on February 13th, 1912, and an amended provisional valuation on September 19th, 1912, which gave gross value £2,550, total value £2,500, difference £1,750, full site value £800, assessable site value £750. The gross and total values were agreed, and substantially the only question was, What was the value of the divested site, and was £1,750 the correct difference ? The appellants contended that the difference was excessive, and that if the buildings were burnt down the site would fetch double £800. The area was 195 square yards ; frontage 11 yards 3 inches ; it was a good compact site, having a fair amount of frontage for its depth, which was average. The land was worth all through at least £8 a yard ; it could be let at 8s. a yard. Davis bought the property in April, 1902. He had previously occupied the adjoining premises, the lease of which ended in November, 1902. He offered to take it on a building lease at 8s. a yard ground rent, and eventually bought it for £2,050. His intention was to pull down the old buildings and rebuild, but after inspection a few hundred pounds were spent on repairing the buildings. The value of the property was really in the situation ; it was in a busy street, close to the Market Place, Jamaica Row, and the Bull Ring.

A. A. Rollason, solicitor to W. Davis, said that Davis offered 8s. a yard, and said he would spend £1,500 on the property. Witness offered £7 10s. a yard, and then bought it for £2,050. The buildings were very old and

in a very bad state. He leased 3 and part of 4 to the Midland Railway Company at £130 for 21 years from September 29th, 1902, and the rest at £40 for seven years from June 24th, 1906. On the death of Davis on October 17th, 1911, estate duty was paid on £2,500.

Cross-examined: He knew the value of property in this neighbourhood. There was a slump before 1902; since 1902 values had not gone down. He put the value of the property at £10 a yard. In 1901 £1 a yard per annum was asked for this site. His instructions were to pay £10 5s. a yard for the site.

Horatio Lane valued the bare site at £8 a yard freehold. On April 30th, 1909, he could have let it at 8s. a yard. He disagreed with £1,750 as the difference; he valued the buildings at £900, the site value at £1,600. He thought the property would fetch more now than when Davis bought it. There had not been a fall in the site value.

Cross-examined: There had been a fall in values in the last fifteen years in parts of Edgbaston Street. Properties in this immediate neighbourhood had not deteriorated.

G. E. Fowler said that Edgbaston Street was an important street. The property had an excellent position. He thought that on April 30th, 1909, it would have fetched £7 10s. a yard divested.

Cross-examined: Particulars of sales in the neighbourhood gave values per yard much less than the estimate of this property.

Re-examined: Worked out per foot frontage this property on his estimate was not as expensive as the others. Unquestionably there had been a fall in value since the Finance Act came into force; there was now no demand for properties.

J. A. Harper did not think the buildings on this property had a value as buildings; he did not think they were safe. He valued the divested site at £8 a yard at least. He put the leasehold value of the buildings at, roughly, £750.

Mr. Shaw said that the gross value was agreed, and the only point was the site value. The difference was merely a matter of arithmetic. The Commissioners had put the site value at £4 a yard, and evidence would show that it was a very full value.

Colonel Ludlow said that values in this street had been declining ever since the opening of Corporation Street, about 1878; even since 1901 there had been depreciation; and he could point to cases of considerable falls in value. He thought £3 16s. a yard was a full divested value. He did not think that in 1909 there would have been a buyer.

Cross-examined: He did not think the whole property would fetch £2,500. He had not considered the difference, and could not say if it was a correct figure. He had not considered what the buildings added to the site; they had merely a rental value. It was a good site, with good frontage for the depth. He thought there was no doubt that the Finance Act had caused a decline in values.

L. O. Matthews put the value divested at £4 a yard, less £50 for dominating lights, making £750. That was a very full valuation, and he was sure no higher price would have been obtained in 1909. Values in the street had been declining for a great number of years.

Cross-examined: The site was convenient. It was not now the commercial centre of the city. He had not considered the difference. One could not apportion the rent between the accommodation and the situation. The buildings were of very little use.

Mr. Allen said he drew attention to the fact that the figures in the provisional valuation all hung together. Both the Commissioners' witnesses said that they had not considered the difference, against which the appeal was made, and both said that the value of the buildings was very small. The Commissioners had put down a site value of £800, and then by their evidence attacked their own gross value, which they had swollen up to £2,500. There had been a fall in values since the Finance Act, but these values were to be estimated as on April 30th, 1909.

Awarded: That item No. 2 (the difference) should be £1,170 instead of £1,750 as stated in the amended provisional valuation, and that the item assessable site value should be £1,330 instead of £750 as stated in the amended provisional valuation. That the costs of the reference shall be paid by the Commissioners of Inland Revenue.

For the appellants: William Allen, instructed by A. A. Rollason.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before P. F. TUCKETT, ESQ., Referee, 3rd July, 1913.

S. W. PEDLEY v. THE COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—LAND LEASED BEFORE FINANCE (1909-10) ACT, 1910—POWER TO DETERMINE—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 17 (5).

Mr. Raisen said that the appeal was against an assessment to undeveloped land duty in respect of land in Hornchurch amounting to £2 19s. 8d. for the year 1910-11, and £5 19s. 4d. for the year 1911-12. The land was leased on May 9th, 1906, by the appellant to A. R. Gay for 14 years from June 24th, 1906, and the lease contained the following proviso, under which the Commissioners claimed that duty was exigible under Section 17 (5):—

"Provided also and it is hereby expressly declared that notwithstanding anything hereinbefore contained if the landlord shall at any time or times during the said term hereby granted be desirous of acquiring the whole or any part or parts of the land for building sale or public purposes and shall deliver to the lessee or leave for him . . . three calendar months' previous written notice of such his desire such notice to expire on any of the quarter days for payment of the said yearly rent then and immediately after the expiration of any such notice or notices the term hereby granted and these presents and everything herein contained shall so far as respects the lands and premises described in or particularly referred to in any such notice or notices but not further

"or otherwise absolutely cease and determine &c. and it shall be lawful
 "for the landlord at any time after the expiration of such notice to enter
 "upon and resume possession of all the said land described therein."

He submitted that under this proviso the landlord was not liable to assessment. He had no power to determine on September 29th, 1910; in fact, the earliest date for determination had not yet arisen. This was a conditional power to determine. If in a lease for 21 years either party had power to determine at the end of 7 years, that was an absolute power, and different to this one. In this case the power was only exercisable on the happening of the event on which the condition depended, and there was no evidence that the landlord was desirous of acquiring the land. The lease must be construed strictly against the lessor. If the condition were abolished the lessee had merely an interest in the land for three months only, which was a ridiculous view to take. The desire must be a *bona fide* desire; the landlord could not arbitrarily say that he wanted the land for building if he did not so want it. Before the landlord could determine there must be a *bona fide* desire to acquire the land for the purposes specified in the lease. (*Russell v. Coggins*, 8 Vesey, 34; *Gough v. Worcester and Birmingham Canal Company*, 6 Vesey, 353; *Doe v. Abel*, 2 Maule and Selwyn, 541.) There was the analogy of a lease determining on a given event, *e.g.*, the death of A B, in which case the event had to happen first. He submitted that the landlord had not yet had power to determine.

Mr. Shaw said that the only question was whether the clause did or did not give the landlord power to determine within the proviso of Section 17 (5). True it was conditional, but the condition depended entirely on the volition of the landlord; if he decided that he desired the land for the specified purposes, it did not seem to matter whether his desire was *bona fide*. But even if the desire had to be *bona fide*, it rested with him whether he should have that *bona fide* desire. If the landlord wanted the land for building he could get it, and if he wished to do so he could develop the land. He was in no worse a position than a man who had not let his land and did not want to develop. If the words in the lease were "if the land is required," then the landlord would have to show that it was required. He submitted that the cases quoted did not help in this case, being under entirely different conditions. The landlord only had to put himself into a state of mind and then he could determine. The question of the expediency of exercising his power was not material.

Mr. Raisen, in reply, said the Commissioners must show that at the date when they alleged that the tenancy could be determined the circumstances for determining had arisen. It did not depend on the volition of the landlord entirely, but partly on the action of the community.

Awarded: That the assessments of undeveloped land duty in respect of the above property have been incorrectly made, the property being exempt under Section 17 (5) of the Finance (1909-10) Act, 1910.

For the appellant: A. F. Raisen.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before HOWARD MARTIN, ESQ., *Referee*, 8th July, 1913.

THE GOVERNORS OF THE WHITGIFT EDUCATIONAL FOUNDATION,
CROYDON, *v.* THE COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—LAND LEASED BEFORE FINANCE ACT,
1910—POWER TO DETERMINE—FINANCE (1909-10) ACT, 1910
(10 EDW. VII., c. 8), s. 17 (5).

This was an appeal against an assessment to undeveloped land duty of property known as Christian Fields, situated at Norbury Hill and Gibson's Hill. There was no question as to the figures. The land was leased on November 6th, 1902, for 14 years for agricultural purposes, and the lease contained the following proviso :—

“ Provided always and it is hereby agreed and declared between and
“ by the said parties hereto that in case the reversioner shall at any time
“ during this demise desire to resume possession of any part or parts of
“ the land hereby demised for any purpose other than any agricultural
“ purpose and he or the Governors or the Receiver or Solicitor for the
“ time being of the Governors shall give to the Lessees or leave at their
“ last or usual place of abode or business in England twelve calendar
“ months' notice in writing of such desire expiring at any time of the
“ year then at the expiration of such notice the reversioner may take
“ peaceable and quiet possession of such part or parts of the said land as
“ shall be specified in such notice and then and from thenceforth the
“ yearly rent hereby reserved shall be reduced according to the quantity
“ of land resumed at such a rate per acre or for any quantity less than an
“ acre as the total amount of the rent hereby reserved bears to the total
“ quantity of the land hereby demised and such of the said land as
“ shall continue to be held by the Lessees shall be held by them at
“ such reduced rent and the certificate of the Surveyor for the time
“ being of the Governors shall be conclusive evidence as to the amount
“ for the time being of such reduced rent and the covenants provisoes
“ conditions agreements and directions herein contained with reference
“ to the whole of the land and premises hereby demised shall so far
“ as the same may be applicable continue in force and apply to such
“ part of the same as shall be left in the possession of the lessees in the
“ same manner as if such part only had originally been included in these
“ presents and the reduced rent had been herein inserted instead of the
“ rent hereby reserved.”

Mr. Hilbery said that the tenancy still continued and was bound to continue for the full term of 14 years. The assessment had been made because the district valuer had taken the view that the lease contained a power to determine. The proviso in this lease was not within the proviso of Section 17 (5). The Commissioners' case must be that the proviso was a power to determine the tenancy of the whole of the land a year after the Act came into force. This was a conditional proviso, and did not come into operation unless the landlord desired and purposed to resume the land for a purpose other than agricultural; it only became an empowering

proviso on the happening in fact of the landlord desiring to retake. If the appellants gave notice purporting to be under the proviso and did not use the land for a purpose other than agricultural, an action would lie against them on the part of the tenant. The land could not be used except for agriculture, and the appellants had no desire to use it except for agriculture. The reversioners of the lease were the trustees of the foundation, and trustees could not exercise a power capriciously, but only with due regard to the interests and the beneficiaries of the trust. If it would be bad business to put the proviso into operation, the trustees could be stopped from doing it. It must be assumed that the trustees would act without committing a breach of trust. If such a conditional proviso was within the statute why should it not be said that the ordinary proviso for re-entry if rent was not paid within 21 days was within it also? If rent was not paid for 22 days that date would have to be taken as the earliest date of determination. The allowance by the Commissioners up to April 30th, 1911, was made on the assumption of the whole property being retaken, but the proviso only contemplated the resumption of the land in parts as and when it was required.

Harold Williams said that he made a report in June, 1913. The property was absolutely unsuited for any purpose but agriculture. It was quite impossible to use the land for building purposes. No boards had ever been put up.

Cross-examined : Roads could be made, and houses could be built, but nobody could be got to live in them. He could not advise development.

Walter Hooker agreed with the previous witness. The land could only be developed from the south. It had a building value, but that value was not realisable at present.

Robert Marshall, solicitor to the appellants, said that the appellants acted under the general law applicable to charitable trustees. They had no desire to resume the land.

Mr. Shaw said that the case admitted of being put quite shortly : Did "power to determine" apply to a conditional power? The Commissioners submitted that it did, provided that it depended entirely on the desire or volition of the landlord. He admitted that the lease gave the landlords only a conditional power to determine, and the evidence was that it was not commercially expedient for the landlords to resume for purposes other than agricultural, but the question was : if they had the desire, had they the power? The question of expediency did not enter ; one must merely look at the proviso in Section 17 (5) and the clause in the lease.

Mr. Hilbery, in reply, submitted that, when the Commissioners admitted that the power was conditional, they admitted the appellants' case, as the power did not arise till the condition had been fulfilled, and the evidence was that the condition had not been fulfilled.

Awarded : That the property is not at present liable to undeveloped land duty.

For the appellants : G. M. Hilbery, instructed by Marshall & Liddle.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before H. E. MITTON, ESQ., Referee, 10th July, 1913.

EARL OF LONDENBOROUGH v. THE COMMISSIONERS OF INLAND
REVENUE.

PROVISIONAL VALUATION—VALUATION OF MINERALS—TOTAL
VALUE AND CAPITAL VALUE OF MINERALS—FINANCE (1909-10)
Act, 1910 (10 EDW. VII., c. 8), s. 23.

Mr. Allen said that this was an appeal against the total value and capital value of minerals. He wished to mention three points, which might arise at a later stage, but he did not ask the Referee to deal with them at this hearing. The points were: (1) That no valuation of the minerals had been made within the Act; the valuation of all minerals should have been made separately; (2) That there was no direction in the Act that the valuation of minerals should be made as on April 30th, 1809; (3) That a lump sum valuation was served on the appellant, and it was quite impossible to say what amount referred to minerals.

The estate in question was the Selby Estate, which for this valuation was divided into two portions. The western area, of 3,807 acres, was agreed at £24,480, but the valuation of the eastern area, of 7,177 acres, was disputed. By Section 23 (2) if an owner desired a value to be put on his minerals, he must say so in a form supplied by the Commissioners, and must state his estimate of their value. After the passing of the Act the appellant instructed Mr. Turner to make a valuation. Turner agreed the western area with the Commissioners, and informed them that his estimate of the eastern area was £72,798. The figures for the eastern area were more moderate than for the western, for on the western area the appellant only owned manorial rights, while on the eastern he owned the freehold, surface, and minerals.

Turner's valuation was made before any provisional valuation was served: it was not made for sale purposes, but only to arrive at the capital value. On March 26th, 1912, a provisional valuation of £42,636 was served; notice of objection was given on April 3rd, on the ground that the figures were insufficient, and notice of appeal on June 26th, the Commissioners having, on June 11th, refused to amend. Turner's valuation was made as at April 30th, 1909, and he disregarded any facts that had come to his knowledge since that date. Only one borehole, known as Barlow No. 1, had been put down at that date, which found coal measures extending for 1,060 feet. It was very rare to find even 500 feet of coal measures without a paying seam. The appellant's valuation only represented £10 an acre, which was a very moderate figure.

David Neville Turner said that in December, 1911, he valued the minerals at £72,798, only considering the facts known up to April, 1909. A borehole had been put down and finished about 1906 or 1907; it had passed through a fault and got out of the vertical. A second borehole was begun in February, 1909, which in April, 1909, would not have reached the minerals, though it had since done so. He had seen cores of the measures and coal from the bore, and what he saw confirmed his

valuation. The estate lay within an area where coal would probably be found; coal was being worked about six miles to the west, also on the south. In his valuation he had considered the values put on other coal in the district. He took £150 royalty value per acre, which he thought very moderate; deducted 10 per cent. for faults, pillars, &c., which was a full deduction; 12 years as the period before the coal would be worked; discount rates $12\frac{1}{2}$ per cent. and 3 per cent.; and period of working 70 years.

Cross-examined: He did not think the absence of correlation would be material as to the value of concealed coal. On April 30th, 1909, no minerals had been found except a 3-foot seam at Barlow, at a depth of 2,122 feet. He had heard that there was a bed of rock salt, 20 feet thick, at a depth of 990 feet. No attempt had been made to work the 3-foot seam. His calculations of the value were based on the assumption that a valuable seam of coal existed. The western area would be more valuable per acre than the eastern, apart from the manorial complications.

Re-examined: He put the western area at £200 per acre, and deducted £75 for the copyholders' interests. He thought that on April 30th, 1909, the minerals had a large speculative value.

H. St. J. Durnford said that on April 30th, 1909, the nearest known workable seam was at Fryston. In 1903 he recommended a deep boring (No. 1, Barlow). It went through coal measures for about 1,000 feet from a depth of 700 feet. It was very unusual in Yorkshire to find that depth of measures without workable coal, and it induced them to spend a further £5,000 on a second bore. They struck a workable seam of 4 feet 2 inches at 1,562 feet, and another seam of 8 feet 6 inches at 2,300 feet. He was sure that 6 feet of coal could be relied on under the eastern portion. It was a very good situation for working, the finest in Yorkshire, the Ouse being navigable there. £150 an acre was a reasonable value for the coal; he allowed the same deductions as Turner. He had considered settled valuations of minerals in the neighbourhood in estimating the value of this coal.

Cross-examined: He thought a man would have given £72,000 for the minerals on April 30th, 1909. Options had been granted on coal to the north of this property. It would be the possibility of finding better coal than had been found that would justify the price.

C. E. Rhodes said it was hypothetical whether the Barnsley seam was workable. He was of opinion that the coal measures of west or south Yorkshire underlay the estate. His valuation was £72,000 odd, at £150 an acre, less 10 per cent. for faults, &c., with a lease of 75 years from 1916, with no payments up to 1916, and no coal worked for 12 years, with discount rates of $12\frac{1}{2}$ per cent. and 3 per cent. Unless the seams were worth more than £100 an acre he did not think anyone would work the coal, owing to the depth of shaft and large amount of capital required.

Cross-examined: It would be a speculation to give £42,000. It was either worth nothing or £150 an acre. No one would give £42,000 who would not be prepared to give more. All that the bore of 1906 did was to prove that the coal measures were within a reasonable distance of the surface.

Mr. Kingdon said that the question turned on the language of Section 23 (1), which must be read in conjunction with Section 26 (1), which gave the general directions as to valuation. It was quite clear on reading Sections 23 and 26 that the conditions of valuing were to be got from Section 26 (1), and that the valuation must be as on April 30th, 1909. Things of general knowledge, what had been done and what the results had been, could not be ignored. When a high value had been put on by the owner under Section 23 (2), the valuer was justified in putting a higher value than he would otherwise have done, if he had not, under Section 26 (3), to consider the owner's estimate. That was the only justification for putting a value as high as £42,000, for up to April, 1909, nothing had been found for which the appellant could get any money. Whether minerals occurred under copyhold land or not, it was the minerals which were being valued, and the Commissioners had accepted the value of the western area as representing the full interest of the landlord and the tenant.

Charles H. Gott, superintending valuer for the West Riding, considered that the provisional valuation represented the highest value he could put on the minerals, and, apart from the owner's estimate, he would not have put such a high value. The limit of proved coal defined by the Coal Commission of 1905 was not within six miles of this property, and between the proved coal area and this estate there were coal lands not yet taken up.

Cross-examined: He thought a reasonable man might arrive at a figure of £42,000, but it was the highest figure that he could justify. The eastern area was more compact than the west, and, if there was coal, it was a good site from which to get it away. The cost of sinking was so great that it would not be worth doing unless the coal was a good paying proposition. He doubted whether any coal in payable quantities would be found under the property.

H. S. Child did not think that on April 30th, 1909, anything justified the expectation of £42,000. He would not advise giving a half or one-third of £72,000. His figure was £38,000, as he wished to put something on the estate as a result of what had been discovered by the Barlow bore, that was on the assumption that the 4-foot seam was workable at £20 a foot per acre.

Cross-examined: The value was a very hypothetical matter.

W. P. Walker, mineral valuer for the West Riding, said he prepared the provisional valuation, taking into account the evidence of the surrounding working collieries and bore-holes. There was nothing in the coal proved to justify £42,000, only in the possibility of coal. He thought perhaps three of the seams found at Fryston might be found here, and he put them at £120 per acre rental value, working deferred 20 years from 1909, and the coal exhausted in 60 years. The expenses of working would be very considerable.

Cross-examined: His discount rates were 15 per cent. and 3 per cent. The rent of the Beeston seam varied from £200 to £40 per acre. He thought the Beeston, and possibly the Silkstone, seam might be there. It was unlikely there would be more than three seams. He did not think any reasonable person would put a figure higher than £42,000.

Mr. Kingdon said that if a seam worth £150 an acre was the only thing that would make this a paying proposition, no one would give more than £12,000. The Commissioners' figures were the absolute limit, either on the evidence of April 30th, 1909, or even on the evidence available since then.

Mr. Allen, in reply, said that he made a point of the value put on the western area by the Commissioners, for a prospective purchaser would discount his payment to the appellant by the amount which he would have to pay to the copyholder. The Commissioners had agreed those figures, and on that basis the eastern part was worth very nearly the appellant's figure. Both parties agreed that there was coal, and valuable coal, on April 30th, 1909, under this land. In the case of a large area involving large figures, a small difference per acre would make a very wide difference in the total. Mr. Walker gave the royalty value as £120 per acre, whereas all the appellant's witnesses agreed on £150. Subsequent events went to show that the optimistic, and not the pessimistic, valuation was correct.

Awarded: That the total value of the minerals on April 30th, 1909, was £57,726. Costs to be paid by the Commissioners.

For the appellant: William Allen, instructed by Royds, Rawstorne & Co.

For the respondents: F. W. W. Kingdon, Assistant Solicitor to the Inland Revenue.

Before THOMAS BINNIE, ESQ., *Referee*, 10th July, 1913.

MISS ELIZABETH JACK FENTON *v.* THE COMMISSIONERS OF INLAND
REVENUE.

PROVISIONAL VALUATION—GROSS VALUE—FULL SITE VALUE—
DEDUCTIONS—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8),
ss. 25 and 27.

This appeal related to the provisional valuation of a villa in Blairmore, a seaside resort in Argyllshire. The ground was burdened with a feu-duty of £6, and a duplication of the feu-duty was payable on the entry of heirs and singular successors.

The figures in the provisional valuation were—

| | £ |
|--|-----|
| Original gross value | 670 |
| Difference between gross value and value of the fee simple of the land divested of buildings, trees, &c. | 550 |
| Original full site value | 120 |
| Deductions from gross value to arrive at total value— | |
| Feu duty | 120 |
| Original total value | 550 |
| Original assessable site value | Nil |

The appellant accepted the original total value and original assessable site value as determined by the Commissioners, but objected to the

remaining items. She contended (a) that the value of feu-duties should not be calculated uniformly on a 5 per cent. basis as was the practice of the Commissioners; but each feu-duty should be separately valued—and in the present case, the feu-duty was worth more than twenty years' purchase; (b) that a deduction (from gross value to arrive at total value) should be allowed for the casualty of £6 payable on the entry of heirs and singular successors; (c) that a deduction (from total value to arrive at assessable site value) should be allowed for preparing the site for building (Section 25 (4) (b)) and should be separately stated; and (d) that a further deduction should be allowed for the cost of clearing the site (Section 25 (4) (e)).

For the respondents it was contended (a) that the universal practice in Scotland was to deduct feu-duties at twenty years' purchase—unless perhaps in the case of valuable town sites, the capitalisation of the feu-duty being intended to fix the amount of the burden as affecting the proprietor and not the price at which the superior could sell it; (b) that if a deduction for the casualty had been claimed in Form IV. it would have been allowed, but it was now incompetent to make the claim [this point was not pressed]; (c) that there had been no extraordinary expense in preparing the site for building, and in any event the cost of so doing was included in the £550 allowed for buildings; and (d) that it had not been proved that the site was more suitable for a different class of building, and consequently there was no occasion to clear the site.

The Referee found as follows :—

| | £ |
|--|------|
| Original gross value | 679 |
| Difference between gross value and value of the fee simple divested of buildings, trees, &c. | 530 |
| Original full site value | 149 |
| Deductions from gross value to arrive at total value— | |
| Feu-duty | £120 |
| *Burden or charge arising by operation of law... | 9 |
| | 129 |
| Original total value | 550 |
| Deductions from total value to arrive at assessable site value— | |
| Deduction from gross value to arrive at full site value as above... .. | £530 |
| Works executed | 20 |
| | 550 |
| Original assessable site value | Nil |

For the appellant : McIlwraith & Walker, Greenock.

For the respondents : Alexander Blair, Chief Valuer for Scotland.

* This item represents the casualty of a duplication of the feu-duty payable on the entry of heirs and singular successors. Under Section 15 of the Conveyancing (Scotland) Act, 1871, such a casualty may be redeemed on payment to the superior of the amount of the casualty with an addition of 50 per cent. D.O.

Before DAVID RANKINE, ESQ., C. & M. E., *Referee*, 11th July, 1913.

ALEXANDER ADDIE'S TRUSTEES v. THE COMMISSIONERS OF
INLAND REVENUE.

MINERAL RIGHTS DUTY—MINING LEASE—COMPENSATION PAID BY
PROPRIETOR TO WORKING LESSEE FOR LEAVING CERTAIN AREAS
UNWORKED—AMOUNT PAYABLE BY ANNUAL INSTALMENTS—
WHETHER PAYMENT OF INSTALMENTS EQUIVALENT TO RE-
DUCTION OF RENT—FINANCE (1909-10) ACT, 1910, s. 20 (1) (2).

A proprietor of minerals agreed with the working lessee during the currency of the lease that the latter should leave certain areas unworked on receiving as compensation from the proprietor a sum of money payable by seven annual instalments.

Held, that the payment of these instalments was not equivalent to a reduction of the rent, and should not be taken into account in assessing mineral rights duty.

In December, 1905, the appellants leased to the Glasgow Iron and Steel Company, Limited, the minerals under part of their estate of Braidhurst, Lanarkshire, in consideration of certain royalties. Under the lease the lessees were taken bound completely to exhaust so far as practicable the seams of coal. It subsequently appeared that the buildings on certain portions of the surface which had been feued or sold by the appellants and their predecessors might be damaged by the complete removal of the subjacent minerals. In order therefore that the owners of the buildings might have facilities for protecting them by the purchase of the minerals which lay under them, the appellants in 1910 entered into an agreement with the lessees under which the lessees agreed to leave unworked the coal and minerals in certain defined areas for six or twelve months from June 15th, 1910, as might be arranged; and during these periods the appellants were to have an option of requiring the lessees to leave the said coal and minerals unworked during the currency of their lease on receiving as compensation the sum of £7,000, payable by seven annual instalments of £1,000 each, the first payment being made on May 15th, 1911. The agreement further provided that in consideration of the grant of the said option the appellants should pay the lessees £500 if the option was exercised not later than December 15th, 1910, and £1,000 if the option was exercised after that date, but before June 15th, 1911, which sums were to be deducted from the lordships in the then current year, and if the option was exercised the £500 or £1,000, as the case might be, was to be imputed towards payment of the £7,000, but if the option was not exercised the lessees were to be entitled to retain the said sums. There was a further provision that the lessees should maintain open roadways to the coal left unworked, and when called upon by the appellants should proceed to work it or any part of it, and in that event should pay, in addition to the lordships payable under the lease, a further lordship of

1s. per ton until such additional lordships should amount to £7,000 or such part of that sum as might have been paid to them.

On 6th June, 1911, the appellants exercised the option above referred to, and thus became bound to pay to the lessees the said annual instalments of £1,000 each.

The Commissioners assessed the appellants for the year ending 31st March, 1913, on the sum of £2,046, being the amount of lordships received by them less certain agreed-on deductions for rates and income tax, and refused to make an allowance in respect of the £1,000 paid to the lessees in pursuance of the above agreement.

The appellants maintained that the agreement was a qualification of the lease, that the payment of £1,000 per annum was equivalent to a reduction of rent, and that they were only liable to be assessed on the sum of £1,046 which was the net revenue received by them.

The Referee *decided* that the £1,000 was part of the £7,000 which the appellants had agreed to pay to their mineral tenants, and that the payment thereof by the appellants, whether effected by direct payment or by deduction from the rent or lordship, was not equivalent to a reduction of rent.

In a note to his award the Referee, after stating the facts, said :—

The only question for decision at present is whether the payment of the £1,000 by the Braidhurst Proprietors (the appellants), as referred to in the appeal, is equivalent to a reduction of the mineral rent. It is part of a sum of £7,000 which falls to be paid by the Braidhurst Proprietors to the mineral tenants, and which has apparently been arrived at by calculation at the rate of 1s. per ton on the estimated quantity of coal to be left unworked, or otherwise it is an agreed-on sum to be paid to the mineral tenants in respect of the loss of profit which they would have made by the working of the coals. The £7,000, or any portion thereof, is neither part of the lordship nor the rental payable by the tenants. The lordships payable by the tenants are upon coals worked from portions of the leasehold other than under Parkneuk Iron Works. In one year the mineral tenants are entitled to deduct the payments from the mineral rent. In other years the payment is made absolute on the Braidhurst Proprietors without reference to the amount of rent. But though these payments were or are deducted from the rent, that is no more than a matter of accounting or convenience between parties, and it is not equivalent to a reduction of the rent.

For the appellants : Baird Smiths, Muirhead & Guthrie Smith, Glasgow.

For the respondents : H. Watson, of the Solicitor's Department, Inland Revenue.

Before DAVID RANKINE, ESQ., C. & M. E., *Referee*, 11th July, 1913.

MISS HENRY McCULLOCH'S EXECUTORS AND OTHERS *v.* THE COMMISSIONERS OF INLAND REVENUE.

MINERAL RIGHTS DUTY—LEASE OF GRANITE QUARRY—GUARANTEE OF MINIMUM SUM FOR ROYALTIES IN ADDITION TO A FIXED RENT—WHETHER FIXED RENT WAS LAND RENT OR QUARRY RENT—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., C. 8), s. 20. (1) (2)

Two leases of granite quarries provided that the lessees should pay fixed rents of a certain amount for the quarries and the right and privilege of quarrying granite, whether the quarries were wrought or not, and also certain royalties, of which a minimum sum was guaranteed by the respective lessees *in addition to* the fixed rents.

Held, in the circumstances, that the fixed rents were quarry rents and not land rents, and were liable to assessment for mineral rights duty.

The assessments against which this appeal was taken related to the rental value of certain granite quarries on Fell Hill, Glenquicken, in the Stewartry of Kirkcudbright, portions of which were leased by the appellants in 1899 and 1906 to the Scottish Granite Company, Limited, and William Stewart respectively.

The granite company's lease provided that the lessees should pay "for the said quarries and the right and privilege of quarrying and away taking the granite, whether the quarries are wrought or not, a fixed rent of £45 per annum Declaring that over and above the said fixed rent the following lordships or royalties shall be payable" [here follow the details] "And the second parties" [the lessees] "hereby bind and oblige themselves and their foresaids to pay a minimum sum of £55 yearly as lordship or royalty in addition to the rent above specified, and that whether the quarries shall be worked or not And the second parties and their foresaids shall be bound regularly to settle the whole claims of the agricultural tenants and others for surface damages or other competent claim of the agricultural tenant"

William Stewart's lease provided that he should pay "for the said quarry and right and privilege of quarrying and away taking the granite, whether the quarry is wrought or not, a fixed rent of £45 per annum Declaring that over and above the said fixed rent the following lordships shall be payable" [here follow the details] "And the second party hereby guarantees that the amount payable in respect of said lordships and fixed rent shall not in any year be less than the sum of £150 And the second party and his foresaids shall be bound to settle regularly the whole claims of the agricultural tenants and others for surface damages."

Mineral rights duty was assessed by the Commissioners on both the fixed rent and the royalties payable under each lease.

On behalf of the appellants it was submitted that the fixed rent of £45 in each case was not mineral rent but land rent, because in addition to this

fixed rent there was stipulated a further minimum fixed rent for the minerals worked, and mineral rights duty could only be assessed on rent or royalty payable in respect of the material taken out of the quarry.

For the Commissioners it was argued that the terms of the lease were quite explicit, that the £45 in each case was payable for the right of working the minerals.

The Referee *decided* that the £45 in both cases was liable to assessment for mineral rights duty.

In a note to his award the Referee, after quoting the provisions of the leases, said :—

It appears to me that the contexts of the two leases do not favour the opinion that the £45 payable as aforesaid represents land rent, and from the explanation given by the agent and the factor for the appellants who were both present at the hearing of parties, I gathered that the extent of land occupied or damaged by the quarrying operations under the two leases is not of a rental value of £45. It appears to me that the £45 represents part of the quarry rental, and accordingly it falls to be taken as part of the rental value which is liable to be assessed for mineral rights duty.

For the appellants : Campbell & Campbell, W.S., Edinburgh.

For the respondents : H. Watson, of the Solicitor's Department, Inland Revenue.

Before H. E. MITTON, ESQ., Referee, 15th July, 1913.

THE SHEFFIELD COAL COMPANY *v.* THE COMMISSIONERS OF
INLAND REVENUE.

MINERAL RIGHTS DUTY—MINING LEASE—WORKING LEASE—
PROPRIETOR—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8),
SS. 20, 21, 24.

This was an appeal against an assessment to mineral rights duty made on the appellants in respect of the High Lane Colliery. The appellants leased this colliery among others from Earl Manvers, paying a royalty rent of 6*d.* per ton, and it was worked by Henry Vardy under a verbal agreement with the appellants, he paying to them 1*s.* per ton. The Commissioners assessed duty on the difference of 1*s.* and 6*d.* on the ground that Vardy was the working lessee, but the appellants claimed that they were the working lessees, and that the rent of 1*s.* per ton was partly for materials supplied and services rendered by them to Vardy.

Mr. Shreeves said that there was nothing in the Act authorising the assessment. There was only a verbal agreement between the appellants and Vardy. The appellants claimed to be the working lessees within the Act; no one else had the right to work the minerals, and they employed

Vardy, who had been a working apprentice of theirs, to work the coal for them, he paying 1s. per ton for royalty and services rendered and materials supplied. The appellants fixed the selling prices. The work they did for Vardy far exceeded 6d. per ton in value. Sixpence per ton was in excess of the rent customary in the district, and he asked the Referee in his discretion to make an allowance under the proviso to Section 20 (2) for the expenditure incurred by them, as they had spent money ordinarily paid by a lessee. Vardy's father worked the pit before him. The appellants' surveyors and managers went at times to see that everything was going right.

Cross-examined: In the return for mineral rights duty the working lessees were described as the "the executors of A. Vardy." Vardy worked the coal and employed his own men to do so. His obligation to the appellants was to pay 1s. a ton for all coal raised; he did not pay them anything else. He had the right to sell the coal and make what profit he could. The appellants had to supply the surveyor, and the colliery manager went to inspect periodically. If Vardy got into a difficulty he had the right to call on their employees to help him. They kept his plans, audited his books, supplied him with ropes and other sundries, and arranged his selling prices. He believed that Vardy was the certificated manager of this pit under the Coal Mines Act. The appellants made a small nominal charge for some of the materials in order to make Vardy careful.

Henry Vardy said that the appellants supplied him with wire ropes at a nominal charge, and pumped his water out. Their shaft gave him ventilation. If he wanted air pipes, he would go to them. The water ran to the appellants' shaft, and if they did not pump his pit would be swamped. It was arranged verbally that the appellants should perform these services.

Cross-examined: The arrangement had been in force since 1884; no fresh arrangement was made when his father died. The shaft, which was kept in repair by the appellants, was originally made for the appellants' purposes, but now only ventilated his pit, and was not used for anything else. Ten years ago the pit was swamped by the appellants leaving a barrier of coal. He did not get compensation while the pit was flooded. He could work the coal as he liked, and any profit went to him. Surveying would cost him five guineas a year; he had no idea what the other services were worth; ropes would cost about £17.

Mr. Shaw said that the appellants had many pits in the neighbourhood which they worked themselves, but he suggested that they did not work this. The arrangement with Vardy was undoubtedly a mining lease within Section 24, for a mere licence by parole was quite sufficient to make the person granting the licence a lessor and the licensee a lessee. The appellants had the right to work this pit by lease, and they granted the right to work it to Vardy in return for 1s. per ton. They might give Vardy some extra assistance, but Vardy had the right to work. By Section 20 (4) duty had to be recovered from "the immediate lessor of the "working lessee," who in this case was the appellant company, and by Section 21 they were liable to be assessed on the difference between 6d. and 1s. The appellants said that they had incurred expenditure and that

the rent was higher than was customary, but the proviso to Section 20 (2) only applied to proprietors, and by Section 24 proprietor did not include a person entitled as lessee, so that the appellants were not proprietors, and were not entitled to a substitution of rent. He did not think that what the appellants did for Vardy made any difference; the only question was whether they had granted to Vardy a licence to work the coal. He submitted that the 1s. per ton was rent paid for the right to work the minerals. Nothing was said till Vardy was called about pumping or ventilation. The shaft was made for the appellants' purposes, and could only be claimed for by proprietors, and he submitted that the pumping was done mainly for their own purposes.

Mr. Shreeves, in reply, said that in the 1s. per ton they included ropes and other material; a part of the 1s. was for something other than mineral rights, it was for materials supplied and services rendered. The Commissioners had no right to assess to mineral rights duty in respect of payments made for something other than mineral rights. The materials and services came to more than the 6d. per ton, and the shaft had for many years been kept in repair by the appellants solely to ventilate Vardy's pit.

Awarded:—

- (1) The executors of A. Vardy are the working lessees.
- (2) The appellants are the immediate lessors as defined by the Finance (1909-10) Act, 1910.
- (3) The verbal agreement between the appellants and the executors of A. Vardy is a mining lease within the meaning of the Finance (1909-10) Act, 1910.
- (4) The amount of rent paid by the executors of A. Vardy to the appellants is 1s. per ton of coal worked and got.
- (5) The appellants are liable to pay the duty on 6d. per ton, being the difference between the amount received from the executors of A. Vardy and the amount paid to the Earl Manvers, and there was no evidence of substantial character produced to show that Section 20 (1) of the Finance (1909-10) Act, 1910, could be applied.
- (6) The costs of the hearing against the appellants.

For the appellants : J. Shreeves, secretary of the appellant company.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before THOMAS BINNIE, ESQ., *Referee*, 6th October, 1913.

H. M. McNEILL HAMILTON *v.* THE COMMISSIONERS OF INLAND
REVENUE.

REVERSION DUTY—AGREEMENT BY THIRD PARTY TO ACQUIRE
LESSEE'S INTEREST IN LEASE—RENUNCIATION BY LESSEE TO
LESSOR AND CONVEYANCE IN FEU-FARM BY LESSOR TO THIRD
PARTY—WHETHER TRANSACTION CONSTITUTED ACQUISITION
BY A LESSEE OF THE LESSOR'S INTEREST—REVENUE ACT, 1911
(1 GEO. V., c. 2) s. 3 (3).

A school board agreed to acquire from a lessee her interest in a lease of certain land, and also agreed with the lessor that he should feu the land to the school board in consideration of a feu-duty. The transactions were carried into effect by a feu contract between the lessor and the school board, to which the lessee was a consenting party, and in which she renounced her lease in favour of the lessor, and the lessor conveyed the land to the school board in feu-farm. At the date of the feu contract the lease had more than fifty years of its term to run, and the total value of the land did not exceed £500.

Held, that the transaction did not disclose an acquisition by a lessee of the lessor's interest in the lease, and that the lessor was not entitled to the exemption from reversion duty allowed under Section 3 (3) of the Revenue Act, 1911.

The facts of the case and the arguments submitted are fully stated in the Referee's award, which was as follows, viz. :—

Having heard parties on the appeal I find that the following facts are agreed or admitted :—

1. That up to Whit-Sunday, 1912, the appellant was possessed of the lessor's interest in a lease for 99 years from Whit-Sunday, 1864, of the property Nos. 105 and 107, Union Street, Larkhall ; and that the lessee's interest in the said lease was possessed by Miss Margaret Clark.

2. That some time prior to Whit-Sunday, 1912, the school board of the *quoad sacra* parish of Larkhall agreed to acquire from Miss Clark her interest as lessee in the said lease.

3. That Miss Clark did not grant an assignation to the school board of her interest in the said lease.

4. That as narrated in feu contract between Henry Montgomery McNeill Hamilton (the appellant) and the school board of the parish of Larkhall, dated 13th, 15th, and 16th, and recorded 18th May, 1912, Miss Clark renounced her interest in the said lease to and in favour of the appellant at Whit-Sunday, 1912, and that on the same date the appellant conveyed the subjects comprised in the said lease to the school board in feu farm.

5. That the said lease was determined at Whit-Sunday, 1912, at which date it had still fifty-one years of its term to run.

6. That the total value of the property at the determination of the lease was £270.

7. That by notice of assessment (Reference No. 11 R.D., 1913), dated 2nd April, 1913, the appellant was assessed to reversion duty by the Commissioners of Inland Revenue on the determination of the said lease, and that the amount of reversion duty due by him was assessed at £3 7s. 8d.

8. That the appellant agrees that if any duty is exigible from him on the determination of the said lease (which he does not admit), the said sum of £3 7s. 8d. is the correct amount thereof.

9. That by notice of appeal, dated April 18th, 1913, the appellant appealed against the said assessment on the grounds (first) that no duty is exigible, or (second) in any event the amount assessed is too large.

10. That at the hearing before me the appellant, by his solicitors departed from the second of his grounds of appeal.

At the hearing before me it was argued, on behalf of the appellant, that the school board by agreeing to acquire Miss Clark's interest in the said lease had become the lessees themselves, and as such lessees had, by the said feu contract, acquired the lessor's interest in the lease; that it is agreed that the lease at its determination had over fifty years of its term still to run, and that the total value of the property did not exceed £500; that consequently the appellant has brought himself within the exemption from reversion duty allowed under Section 3 (3) of the Revenue Act, 1911; and that, therefore, no reversion duty is exigible from him on the determination of the said lease.

It was argued on behalf of the Commissioners of Inland Revenue that the narrative in the feu contract (which is the only evidence produced of the transaction) proves that the school board had never become lessees themselves; that the renunciation by Miss Clark in the feu contract proves that she was the lessee at the determination of the lease; that on the narrative in the feu contract it is clear that there had not been an acquisition by the lessee of the lessor's interest in the lease, but on the contrary there had been an acquisition by the lessor of the lessee's interest; that consequently the exemption allowed under Section 3 (3) of the Revenue Act, 1911, does not apply; and that therefore the appellant has been properly assessed to reversion duty on the determination of the said lease.

I am of opinion and I find that there has not been an acquisition by the lessee of the lessor's interest in the said lease, and that therefore the appellant is not entitled to the exemption from reversion duty allowed under Section 3 (3) of the Revenue Act, 1911.

I accordingly decide that the appellant has been properly assessed to reversion duty on the determination of the said lease at Whit-Sunday, 1912, in the said sum of £3 7s. 8d.

As the point raised in the appeal is of an entirely novel character, I find no expenses due to or by either party.

If either party so desires, I shall be glad to state a special case on points of law ; but in view of the small amount of money involved in the appeal, I have refrained from doing so meantime.

For the appellant : McCutcheon & Clark, Glasgow.

For the respondents: H. Watson, of the Solicitor's Department, Inland Revenue.

Certain of the Decisions of Referees, &c., reported or referred to in this issue are or may be under Appeal. The results of such Appeals will be reported or referred to in forthcoming issues of these Reports, but in the meantime the possibility of such decisions being reversed on Appeal should be borne in mind.

LAW CASES.

[KING'S BENCH DIVISION.]

RAMSDEN v. COMMISSIONERS OF INLAND REVENUE.

[DECEMBER 10TH, 11TH, AND 12TH, 1912.]

Reversion—Reversion Duty—Determination of Lease—"Total Value" of Land on Original Grant of Lease—Basis of estimating Total Value—Tenancy by "Tenant-Right"—Surrender of Tenancy for Lease—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8) s. 13, sub-ss. 1, 2.

For the purpose of arriving at the amount of the reversion duty payable under Section 13 of the Finance (1909-10) Act, 1910, the method of ascertaining the "total value" of the land at the time of the original grant of the lease, specified in Section 13, Subsection (2), is the exclusive and only method in which such total value is to be ascertained.

On a large estate in the town of H. there were formerly two methods of acquiring land for building thereon, one by lease and the other by "tenant-right." A person desiring to become a tenant of a plot of land by "tenant-right" was required to give, and did give, an undertaking to build on the land; he then entered and built on the land, and on the completion of the building he became a tenant by tenant-right. It was part of the consideration that he should undertake to expend money in building, and until he had done so he was not entered as a tenant. There was an understanding between the parties that such tenants should not be disturbed in their possession so long as they paid the rent agreed upon, which was about one-half the rent payable in the case of leases, but in law they were merely tenants from year to year.

In 1849 one M. became a tenant of a plot of land by tenant-right, being let into possession upon the understanding that he should build upon the land, and he built a house thereon. In 1867 one C., who had succeeded to M.'s interest in the land, surrendered to the lessor his tenant-right interest in consideration of a lease for 99 years, and the lease was granted, there being no covenant or undertaking to erect buildings on the granting of this lease. This lease was determined by surrender in 1910, and upon its determination the Crown claimed reversion duty under Section 13 of the Finance (1909-10) Act, 1910, on the value of the benefit thereby accruing to the lessor, based upon the difference between the "total value" on the determination of the lease (as to which there was no dispute) and the "total value" at the time of the original grant of the lease.

Held (in favour of the Crown's contention), that the "total value" of the land at the time of the original grant of the lease in 1867 was to be

estimated on the basis of taking into account only the rent reserved on the granting of the lease; that the value of any covenant or undertaking given or buildings erected by M. in 1849 could not be taken into consideration, and, further, that the surrender by C. of his tenant-right interest when the lease was granted to him in 1867 was not a "payment" made "in consideration of the lease," as his interest in law was merely that of a tenant from year to year.

Horridge, J., read the following judgment:—

This is a petition of appeal by John Frecheville Ramsden, who is now the owner in fee of the property mentioned in the petition—namely, the premises numbered 9453 Huddersfield, forming part of what is known as the Ramsden Estate—against an assessment for reversion duty under Section 13, Subsection (2), of the Finance (1909-10) Act, 1910.

The facts with regard to this property depend on the admissions of fact, the statement of facts contained in certain passages of the speech of Lord Cranworth in the case of *Ramsden v. Dyson* (L. R., 1 H. L., 129), and in the recital to the Act of Parliament, the Ramsden's Estate (Leasing) Act, 1859, all which matters are made *primâ facie* evidence by an order dated the 26th June, 1912. Further, in the course of the argument it was admitted by the Solicitor-General that the facts in this case as regards Milnes may be taken as the same as in Thornton's case in *Ramsden v. Dyson* (*ubi supra*).

Shortly, such facts are as follows: On the 17th March, 1849, one Milnes applied for the land in question to hold as tenant at will under an understanding that he should build upon it, and he was let into possession at a yearly rent of £1 7s. and was entered in the books of the estate in respect of his occupation, and in fact built the present premises in the years 1849-50. In March, 1852, after an intermediate occupation, the occupation of the premises passed to Joseph Oddy and Martha Smith as joint tenants. On the 13th August, 1859, the Ramsden's Estate (Leasing) Act, 1859, was passed, to which I shall have occasion to refer later, and in pursuance of the powers granted by that Act a lease for 99 years was granted to Daniel Calverley at a rental of £1 16s. 8d.

This lease was determined by surrender on the 8th October, 1910. Such surrender was made in pursuance of an agreement for the grant of a new lease for 999 years to the surrenderors, which new lease was accordingly granted by indenture dated the 9th October, 1910, at a yearly rent of £3 13s. 4d.

There is no dispute that the total value of the land at the time when the lease determined, as found by the Commissioners—namely, £541 13s. 4d.—is correct, and the contention of the appellant is that the total value of the land at the time of the original grant of the lease has been ascertained on a wrong basis.

It seems to me it is quite clear that the original occupier, Milnes, was let into possession upon the understanding that buildings should be erected, as was the case in *Thornton's* case, referred to in *Ramsden v. Dyson* (*ubi supra*), and that he entered upon the land and built, within the words of the recital to the Act of Parliament (which is made *primâ facie* evidence), "in the expectation only of not being disturbed in his possession."

The basis upon which the Referee has decided that the total value of the land at the time of the lease to Calverley is to be estimated is upon the basis of taking into account only the rent reserved. I allowed the appellant to amend his contentions by adding further contentions which were the main ones relied upon before me. The gist of such contentions was that the undertaking to build which existed when Milnes entered into possession is to be considered and taken as part of the basis under Section 13, Subsection (2). The words of that subsection are as follows: "... The total value of the land at the time of the original grant of the lease, to be ascertained on the basis of the rent reserved and payments made in consideration of the lease (including, in cases where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings or to expend any sums upon the property)."

In other words the contention was that the fact of buildings having been erected under the circumstances above mentioned was a portion of the consideration for the granting of the lease to Calverley and came within the words in brackets in the section as being a "covenant or undertaking to erect buildings or to expend any sums upon the property." The position at the moment seems to me to have been as follows: There was under the Act of Parliament no obligation on the part of the lessor to grant the lease, and the Act had merely been passed enabling him to do so if he thought fit. The occupier had no legal rights as against the landlord in respect of these buildings which had been erected on the landlord's land. I cannot find any facts in this case to place the obligation of the landlord with regard to these buildings any higher than the facts in *Thornton's* case referred to in *Ramsden v. Dyson* (L. R., 1 H. L., at pp. 137, 139) in the speech of Lord Cranworth, and in that case it was held that a tenant had no further rights in the property than a tenant from year to year. I will refer later in my judgment to the passage in Lord Cranworth's speech which seems to me to make this clear.

The landlord was in the position of granting a new lease of land then only subject to a yearly tenancy, upon which buildings had already been erected, and there was no covenant or undertaking to erect buildings in any way which formed any portion of or was in any way connected with the transaction of leasing.

I therefore do not think that, even assuming the words "nominal rent" in the section were complied with, upon which I express no opinion as it is not necessary for my decision, the appellant has in any way brought himself within the words in brackets in the section so as to entitle him on this ground to any addition to the value at the time of the original grant of the lease.

It was contended before me that this is similar to a lease granted in pursuance of a building contract, but whether or not that case is within the words in brackets in Subsection (2) it is not this case, as there the lease is only a portion of a larger agreement, and clearly the consideration of contracting to build can be said to be what to some extent induced the lessor to agree to give a lease.

The second contention put before me was that the surrender of such

right as Calverley had when the lease was granted to him in 1867 must be taken as part of the basis under Subsection (2) as being a payment made or consideration given for Calverley's lease. I think in any view of the word "payment" this question depends upon whether or not Calverley had any right to give up other than his yearly tenancy which was replaced by the lease for a longer period.

It was put to me that under the recital in the Act I must take it that he had an expectation of not being disturbed in his possession, but on this point I think the language of Lord Cranworth at the bottom of page 145 (L. R., 1 H. L.) shows the true position: "The appellants say "it must be interpreted as meaning only that though the right conferred "was that of a mere tenant at will, or tenant from year to year, yet so long "as the ground rent was duly paid there was no intention to disturb the "tenants in their possession, and that they might thus safely allow the "matter to rest in the honour of the Ramsden family. If this latter be the "true construction, it is clear that even if such statements as are attributed "to Joseph Brook had been made by Sir John himself, the persons taking "the land would have acquired no right, legal or equitable, beyond that of "a mere tenant from year to year. If any one makes an assurance to "another, with or without consideration, that he will do, or will abstain from "doing, a particular act, but he refuses to bind himself and says that for the "performance of what he has promised the person to whom the promise has "been made must rely on the honour of the person who has made it, this "excludes the jurisdiction of courts of equity no less than of courts of law. "The important question, therefore, is, which of these two constructions is "the correct one? I have no hesitation in saying that, in my opinion, that "of the appellant is the true construction."

At the time those observations were made the Act of Parliament was in existence containing the recital now relied upon. I do not think I can hold that Calverley had any legal right beyond that of a yearly tenant, and upon this basis, in my judgment, there was nothing except rent given as consideration for the lease.

If I am right in this, it is not necessary to decide whether any such release of a right would come within the word "payment," but I do not think it would, as the word "payment" clearly does not include all value, because the case of a covenant or undertaking to erect buildings is expressly mentioned within the words included in the brackets, and I think the word "payments" means payments in the narrow and ordinary sense of the term.

A further contention was raised before me that the provision as to the mode of ascertaining the total value of the land at the time of the original grant of the lease was not an exclusive provision, and that other methods of ascertaining such value might be resorted to, but in my view the section in using the words "to be ascertained" is compulsory, and that this is the only way in which the total value at the time of the granting of the lease is to be ascertained.

In my view the principle upon which the Referee has gone is right, and this appeal must be dismissed with costs.—(109 L. T. R., 105.)

[IN THE COURT OF APPEAL.]

INLAND REVENUE COMMISSIONERS *v.* FITZWILLIAM (EARL).

[APRIL 22ND AND MAY 8TH, 1913.]

Revenue—Reversion Duty—Benefit accruing to Lessor on Determination of Lease—Inclusion of Value of Licence—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 13, sub-ss. 1, 2 ; s. 25, sub-ss. 1, 4 (d).

In order to estimate the value—for the purpose of assessment to reversion duty under Section 13 of the Finance (1909-10) Act, 1910—of the benefit accruing to a lessor by reason of the determination of a lease.

Held (Cozens-Hardy, M.R., and Kennedy, L.J. ; Buckley, L.J., dissenting), that the increased value of the land, owing to the existence of a licence for the sale of intoxicating liquors attached to the premises erected thereon, ought to be taken into account.

Per Buckley, L.J. : A licence is no part of “the land,” and its value ought not to be included in the value of the land.

Decision of Horridge, J. (*ante*, p. 270 ; (1913) 1 K. B., 184), affirmed.

The following written judgments were delivered :—

Cozens-Hardy, M.R. . This appeal raises an important question as to the payment of reversion duty on the determination of a long lease of property which, at the expiration of the lease, was a fully licensed house. The facts may be shortly stated. A lease was granted in 1861 by the then Earl Fitzwilliam for a term of fifty years at the annual rent of £4. The property demised was a plot of land with buildings then in course of erection. A house was built ; and during the currency of the lease a full licence was granted to the occupier of the house. On the expiration of the lease Earl Fitzwilliam granted a lease for fourteen years to the then owner of the prior lease at the annual rent of £29. The lease did not purport to include goodwill. It is agreed that the gross rental in 1911 if the house was unlicensed would be £15, and the total value would be £300. Reversion duty is imposed by Section 13 of the Finance (1909-10) Act, 1910, “on the value of the benefit accruing to the lessor by reason “of the determination of the lease.” And the value of the benefit is to be deemed to be the excess of the “total value” at the expiration over the “total value” at the time of the original grant of the lease. For this purpose the rent reserved is to be the basis of calculation. “Total value” is defined in Section 25, and for the purpose of the present case it is the same as “gross value,” also defined in that section. It means the amount which the fee simple of the land, if sold in the open market by a willing seller in its then condition, might be expected to realise. Mr. Justice Horridge has held, and rightly, that the increased value owing to the licence must be taken into account.

I am disposed to think that the rent—£29—reserved by the new lease is alone sufficient to determine the case. That rent is reserved for the

house. The fee simple would fetch a price depending upon this rent. The goodwill is not demised by the lease, nor is it even mentioned in the lease. The discussion of the precise nature and meaning of goodwill, as applied to a public-house, seems to me irrelevant. In this very Act of Parliament Section 44, Subsection (2), there is a statutory recognition of the fact, which was known to everybody, that the annual value of premises as licensed premises exceeds the value the premises would bear if not licensed. And the provisions under which compensation is provided when the renewal of a licence is refused, of which compensation a part goes to the owner and part to the licence-holder, seems to me to demonstrate that the "gross value" must be increased by reason of the circumstance that there is a licence attached to the house in this sense, that the licence-holder has a licence as occupier of this particular house.

The precise figures are not for our determination. The only point for our decision is this: Is the "gross value" in 1911 to be the value of the house as in fact it is, namely, a licensed house, or is it to be the value of the house as it is not, namely, an unlicensed house?

In my opinion the judgment of Mr. Justice Horridge was correct, and the appeal must be dismissed.

Buckley, L.J.: The duty in question in this case is one imposed by a section found in Part I. of the Act. That part is headed "Duties on Land "Values." They are duties in each case upon land or some interest in land. The duty is levied in each case upon a sum arrived at with reference to the value of the land. The particular duty in this case is reversion duty under Section 13. On the determination of a lease of land the duty is on the value of the benefit accruing to the lessor by reason of the determination of the lease; and that value is to be deemed to be the amount by which the total value of the land at the time the lease determines exceeds the total value of the land at the time the lease was granted, to be ascertained on the basis of the rent reserved—that is to say, on the basis of the rent reserved for the land. I need not refer in detail to other provisions of the Act which show that it is the value of the land that is the basis of the duty.

The question is whether the value of the licence (as it is called), which is taken by agreement to be £200, is part of the value of the land. The Referee held that it was not. In my opinion the Referee was right. Suppose that the freeholder of an extensive area demises a shop upon his land to a grocer and covenants with the lessee that he will not allow other grocers' shops to be opened within a certain distance of the demised premises. He will obtain a larger rent. Say that £100 would have been a rack-rent without the covenant, the lessee may be willing to pay £120 a year with the covenant. The additional £20 a year which he pays is in these facts a payment made for the benefit of a covenant which will insure him or may insure him a larger trade. The capitalised value might be £500. That £20 a year, or £500, is the pecuniary value of a certain limited monopoly. The land is worth neither more nor less by reason of the existence of the covenant. The lessor obtains a larger rent, but obtains it not because the land is worth the larger sum, but because the land plus the covenant is worth more to the lessee than the land with-

out the covenant. The lessor obtains the larger rent at the price of tying his own hands as to the manner in which he will deal with the rest of the estate. When the licence of a public-house is said to be worth £200, the true meaning is that £200 is the present capitalised value of the expectation of future profit by reason of the premises being authorised according to law to be used for carrying on a certain lucrative trade. In the present case it is agreed that the total value of the property at the determination of the lease if unlicensed was £300, and including the value of the licence was £500. This is equivalent to saying that the value of the land was £300 and the capitalised value of the benefit of the authorised trade was £200. To attribute the whole £500 to the value of the land is, with all deference to those who think otherwise, to confuse two things which are distinct—that is to say, the value of the land and the value of the authorised trade which can be carried on upon the land. The statute, I think, taxes the former but not the latter. When the lease determined the land comprised the site and the building upon it, and that building enjoyed the opportunity of making such profits as would accrue from carrying on upon the land the business of a publican authorised as it was by the licence. The present value of the expectation of profit was £200. That sum represented the enhanced value of the business to be carried on upon the land authorised as it was by the licence. The licence was not goodwill, but was something without which the goodwill of a public-house could not be created. The licence was not part of the land. The licence might be forfeited or surrendered or removed, and notwithstanding any of those things the land—that is to say, the site and the buildings—would remain. The £500 is in fact the value of the land plus the present value of the expectation of making profit by reason of the authority given by the licence to carry on the business of a publican on the land.

The Solicitor-General pointed attention to Section 25, Subsection (4) (d) of the Act, which speaks of some part of the total value of land being proved to be directly attributable to goodwill or any other matter which is personal to the owner, and sought to argue from this that goodwill formed some part of the total value of the land. To my mind those words lead to a contrary conclusion. If part of the total value of the land is attributable to goodwill or something personal to the owner, that must be because the goodwill or that personal thing is external to the land and is a *causa causans* which may increase the value of the land although the goodwill or personal thing itself forms no part of the land. A licence, however, is not goodwill. It is an authority to carry on a lucrative business, with the result that a valuable goodwill may be created.

Then it was said that if the case were one of rating, the enhanced value of the premises by reason of the existence of the licence would be a subject-matter in determining rateable value. This is true. But in rating the question is what rent the hypothetical tenant would pay for the premises enjoying as they do a particular advantage. The rent, of course, will be enhanced by the fact that the tenant is, by reason of the existence of the licence (or, in the case which I put by way of illustration, the existence of the covenant), in a position to acquire larger profits, which induces him

to pay a higher rent. In the rating cases the man pays the higher rent for the benefit of the occupation of the land and the benefit of the enjoyment of the licence, and as rent is the basis for rating, the pecuniary benefit of the licence comes into account. Under circumstances, profits are an essential element in rating, as, for instance, in the case of a railway: "It is a mistake to suppose that valuation by rental is a process 'dissociated from the idea of profit' are the words of Lord Watson in *Edinburgh Street Tramways Company v. Edinburgh (Lord Provost)* (1894).^{*} This is not so when the subject-matter to be determined is the value of the land as land. To such extent as the premises may have been rendered more valuable by being fitted up for a particular trade, as, for instance, in the present case by being rendered structurally useful and attractive, that is no doubt an element to be brought into account. But the licence—that is to say, the authority to use the land for certain profitable purposes—is no part of the land, and its value is not included in the value of the land. For these reasons I think that the order under appeal is erroneous, and the decision of the Referee was right.

Kennedy, L.J.: On April 6th, 1911, a lease for the term of fifty years of certain premises, which had been granted by the predecessor in title of Lord Fitzwilliam, who is the appellant in this Court, was determined by effluxion of time. It is undisputed that those premises, consisting at that time of land with a building thereon, constituted "land" within the meaning of the sections of the Finance (1909-1910) Act, 1910, relating to reversion duty. By the express terms of Section 13, Subsection (1) of that Act, "On the determination of any lease of land there shall be charged, 'levied, and paid, subject to the provisions of this Part of this Act, on the 'value of the benefit accruing to the lessor by reason of the determination 'of the lease, a duty, called reversion duty, at the rate of one pound for 'every complete ten pounds of that value.'" By the terms, so far as they are material, of Subsection (2) of the same section, it is provided that the value of the benefit accruing to the lessor shall be deemed to be the amount, if any, by which the total value, as defined by Section 25 of the Act, of the land at the time the lease determines—subject to certain deductions which are for the purposes of this case immaterial—exceeds the total value of the land at the time of the original grant of the lease; and it is further expressly provided that the last-named value is to be ascertained on the basis of the rent reserved and payments made in consideration of the lease. In Section 25 the meaning of the expressions "total value of land" and "gross value of land" is stated, and it is agreed that the total value, for the purpose of applying the provisions of Section 13 to the facts of the present case, in no way differs from that which in the same 25th Section is described as "gross value"—that is to say, the amount which the fee simple of the land, if sold at the time in the open market by a willing seller in its then condition free from incumbrances and from any burden, charge, or restriction (other than rates and taxes), might be expected to realise. All the law applicable to the present case is comprised within these very few and, as I venture to think, fairly plain and intelligible enactments of the Finance (1909-10) Act, 1910.

^{*} 63 L. J., Q. B., 769, 777; (1894) A. C., 456, 475.

The material facts are simple. The annual rent of the land in question reserved by the fifty years' lease, which expired in April, 1911, was a sum of £4. Between the date of the commencement of the lease and the date of its determination the premises now upon it were erected, and a licence granted for the sale of intoxicating liquors; an old "on-licence" within the meaning of the Licensing (Consolidation) Act, 1910, was obtained by the lessee in respect of these premises, and they were at the date of the determination of the lease licensed premises, and were relet to the tenant by Lord Fitzwilliam, as such, at the greatly enhanced rent of £29. It is agreed that, first, the value of the property at the time of the original grant of the old lease, if calculated in obedience to Section 13, Subsection (2), upon the basis of the rent reserved in the lease, was £120; secondly, that the value of the property if valued at the time of termination of that lease as unlicensed, was £300, and if valued as licensed was £500. The difference between the two sums, £200, represents the subject-matter of the dispute between the appellant and the respondents on this appeal, the contention of the appellant being that in calculating under Section 13 the value of the benefit which has accrued to him by reason of the determination of the lease, that portion of the value of the property which springs from its now being licensed property ought to be excluded from consideration. Mr. Justice Horridge, who pronounced the judgment under appeal, rejected this contention, and I think that he was right in doing so. It is, upon the face of it, a somewhat startling contention. It invites the Court, as the Master of the Rolls pithily, but with absolute accuracy in my view, has put it, to hold that this land, which, as I have said, includes in the view of this statute the buildings upon it, ought to be valued not as it in fact is, licensed property, but as unlicensed property, which in fact it is not.

But let us look at the matter more closely. "Total value" under Section 25 is the amount which the fee simple of the land if sold at the time in the open market by a willing seller "in its then condition" might be expected to realise. It is the fact that this total value is £500. Why is the buyer willing to give £500 and not only £300? Because in his eyes the property to which such a licence is attached is worth £200 more than the same property without such a licence. If, according to the measure of total value prescribed by Section 25, the total value is £500, why should £300 be taken as the sum with which the value of the property at the date of the commencement of the expired lease—namely, £120—is to be compared in order to arrive at the amount upon which the reversion duty is to be charged under Section 13? If I follow correctly the arguments put forward in this Court and in the Court below (as reported in 108 L. T. at p. 76), it is said by the appellant that the element which the buyer from Lord Fitzwilliam recognises by the price which he is willing to give in the open market for this property ought not to be considered in valuing this property, because it is said the licence is a personal grant to the licensee; it is part of the goodwill of the business; it is not like goodness of site, a fixed or permanent element of value, but one that may be lost by the forfeiture of the licence, or by its non-renewal through one or other of the causes which existing legislation sanctions as causes for the non-

renewal of old on-licences. I find myself unable to accept this reasoning. The licence is in form a grant to the person who thereby becomes for the time the holder of the licence, but the grant is made to him only in respect of the particular premises. It is really attached to those premises. It is not, as the goodwill of a business may be, a separately saleable thing. It cannot be transferred to other premises without the authority of the magistrates and the consent of the owner of the premises in respect of which it was granted. If the licence is extinguished under the provisions of the Licensing Act, 1910, then under Section 20 of that Act, in the case of an "old on-licence," such as belongs to the premises in the present case, "a sum equal to the difference between the value of the licensed premises . . . and the value which those premises would bear if they were not "licensed premises"—I am quoting from the Act—"shall be paid as compensation to the persons interested in the licensed premises." In Section 44, Subsection (2), of the Finance (1909-10) Act, 1910, the Act under which the question we are considering arises, wherein provision is made for the valuation of licensed premises for the purpose of calculating duties in liquor licences, we read: "the annual licence value shall be taken to be the amount by which the annual value of the premises as licensed premises exceeds the annual value which the premises would bear if they were not licensed premises." The element of value created by the grant of such a licence as was granted in respect of the premises under consideration in the present case during the continuance of the lease is, in my humble judgment, characteristically different from the temporary element of value created by a lessor's covenant in favour of his tenant in regard to restriction upon the use, in competition with the tenant of adjoining property. That covenant is a personal covenant which dies with the lease which granted it. The "old on-licence" does not die with the lease. It may continue to give an enhanced value to the premises in the lessor's hands, though the lessee's interest has expired. And under Section 13 it is the value of the property in the owner's hands at the date of the determination of the lease which has to be ascertained. Nor is the licence, as I think, in any true sense a part of the goodwill of the publican's business. Its existence is essential, no doubt, to the creation of such a goodwill, because the business of the sale of intoxicants cannot lawfully be carried on without a licence. Other connection between the licence and the goodwill of the publican's business there is, so far as I can see, none.

Lastly, in regard to the objection that the existence of the licence as an element of value is not entirely permanent; and in regard to this it is to be remembered that in respect of an "old on-licence" the owner is compensated if its renewal is refused for other than certain specified causes against which under the Licensing Act the owner may to a very large extent protect himself. It appears to me that the possibility of the extinction of the licence is, like the durability of the structure or the continuance of the value of the site for the particular trade, a matter which the prudent buyer in the market will take into consideration in fixing the price which he will offer for the premises. For example, if such licences were permanently attached to the premises in respect of

which they have been granted, the buyer of these licensed premises would no doubt be willing to pay not merely £500, but a good deal more. The risk of the discontinuance of the licence is a circumstance which *pro tanto* affects unfavourably the value of the premises to which it is attached. But it cannot, as I venture to think, operate to take out of the consideration of their total value "in its then condition" the fact that they are premises to which for the time a licence is attached. In my humble judgment no sufficient reason has been adduced by the appellant in this Court for refusing to recognise the existence of the licence as an element of value in property under Section 13 just as it is recognised in the valuation of licensed property under the law of rating, in the assessment of compensation under the licensing laws, and as in practice it is universally recognised in the property market. The unreality of the appellant's case appears to me to be illustrated by his own statement appearing in the petition. He claims that the total value of the land should be put at £300 upon the basis of a gross yearly rental of £15, being the rental which would be obtained if the property were unlicensed. But in fact, for the property as licensed, as it was when the old lease determined—and that is the time that you have to consider—he has obtained a tenant at a gross yearly rental of £29. I think that this appeal should be dismissed.—(82 L. J., K. B., 777.)

[Appeal pending.]

[KING'S BENCH DIVISION.]

THE GOVERNORS OF THE STEPNEY AND BOW EDUCATIONAL FOUNDATION *v.* THE COMMISSIONERS OF INLAND REVENUE.

[JULY 2ND, 1913.]

*Revenue—Reversion Duty—Original Total Value of Property—
"Nominal Rent"—Finance (1909-10) Act, 1910 (10 Edw. VII.,
c. 8), s. 13.*

The method of ascertaining the value of land at the time of the original granting of a lease prescribed by Section 13, Subsection (2), of the Finance (1909-10) Act, 1910, is the only method that is applicable. It is, therefore, not competent to give evidence as to the real value at the time of the original grant apart from the provisions of that section.

An expenditure on land by the erection of houses made by a prospective lessee is not a "payment made in consideration of the lease" within Section 13, Subsection (2).

A "nominal rent" within the meaning of that expression in Section 13, Subsection (2), is rent paid to the landlord merely as an acknowledgment of his rights. The mere fact that the rent paid does not represent the full rent of land and buildings does not make the payment a "nominal rent."

Mr. Justice Horridge read the following judgment :—

This case raises a question as to the basis on which, for the purposes of reversion duty, the total value of land partly included in a lease dated January 26th, 1824, from the predecessors in title of the appellants, to one William Ford, and partly included in a lease dated April 29th, 1822, from such predecessors in title to the said William Ford, is to be ascertained at the time of the original grant of the leases. Coborn Lodge, a portion of the property in question, was erected partly on the land leased on January 26th, 1824, and partly on land included in the lease of April 29th, 1822, but no question was raised before me as to the value of Coborn Lodge, the sole question being with regard to the properties Nos. 1 to 6, Coborn Street, included in the lease of January 26th, 1824, which, with Coborn Lodge, formed the subject of the assessment.

By an agreement dated April 24th, 1822, the predecessors in title of the appellants in consideration of the charges which William Ford would be at in erecting, building, and finishing the messuages or dwelling-houses therein mentioned and of the rents and covenants therein agreed on the part of William Ford to be paid and performed, agreed to demise to the said William Ford, his executors, administrators and assigns the land upon which Nos. 1, 2, 3, and 4, Coborn Street were erected for a term of 94 years from March 25th, 1822, at a rent of a peppercorn for the first year of the said term, and at the yearly rent of £16 for the remainder of the said term, and the said William Ford agreed that he would before March 25th, 1823, erect, build, and completely finish fit for habitation, four brick messuages or dwelling-houses as therein described and should expend at least the sum of £1,500.

By an agreement dated September 2nd, 1822, the predecessors in title of the appellants in consideration of the charges which William Ford would be at in erecting, building, and finishing the messuages or dwelling-houses therein mentioned, and of the rents and covenants therein agreed on the part of the said William Ford to be paid and performed, agreed to demise to the said William Ford, his executors, administrators and assigns, the land upon which Nos. 5 and 6, Coborn Street were erected for a term of 94½ years from September 29th, 1822, at the rent of a peppercorn for the first year of the said term, and at the yearly rent of £8 for the remainder of the said term, and the said William Ford agreed that he would before December 25th, 1823, erect, build and completely finish fit for habitation, two brick messuages or dwelling-houses as therein described, and should expend at least the sum of £750.

By an indenture of lease dated January 26th, 1824, and made between the predecessors in title of the appellants and William Ford, it was witnessed that in consideration of the expense which the said William Ford had been at in erecting the messuages thereby demised, and of the rents and covenants therein reserved and contained on the part of the said William Ford, they, the said predecessors in title of the appellants, demised and leased unto the said William Ford the two parcels of land comprised in the agreements of April 24th, 1822, and September 2nd, 1822, with the six houses erected and built thereon, being Nos. 1 to 6, Coborn Street, for a term of 94½ years from September 29th, 1822, at the yearly rent of £24.

In May, 1910, the lease was surrendered by a transfer from Ford, and the reversion became vested in the appellants. The question, therefore, before me is on what basis the total value of the land and houses forming a portion of the assessment ought to be ascertained at the time of the granting of the lease of January 26th, 1824.

The first point taken before me was that the provisions of Section 13 (2) of the Finance (1909-10) Act, 1910, with regard to the ascertainment of the total value of land at the time of the original granting of the lease were not exclusive, and that the appellants were entitled to give evidence of what was the real value at the time of the original grant apart from the provisions of that section. It was not disputed that the point was dealt with by me in the case of *Ramsden v. Commissioners of Inland Revenue*, in which I held that this provision formed an exclusive mode of ascertaining the value. I think a passage in the judgment of the Master of the Rolls in the case of *The Commissioners of Inland Revenue v. The Marquess of Anglesey* (29 T. L. R., 495) points to this being the right view when dealing with the total value of the land at the date of the original grant of the lease. That passage is as follows:—"That is not to be ascertained on the principles of the total value found in Section 25, but that is to be ascertained as the basis of the rent reserved and payments made in consideration of the lease at the time when the lease was originally granted." I therefore hold that I am bound to apply the principles prescribed in Section 13 (2) to the ascertainment of the total value of the land at the time of the granting of the lease.

The second point taken was that on the wording of Section 13 (2) the sums of £1,500 and £750 were payments made in consideration of the lease and should be added to the capitalised value of the rent reserved, which had not been done by the Commissioners in this case, whose decision had been affirmed by the Referee. On behalf of the Crown it was contended that payments made in consideration of the lease were confined to payments of the same nature as a premium or fine on the granting of a lease, which payment would go into the pocket of the lessor. Mr. Cave, on behalf of the appellants, contended before me that this meant inserting into the section "payments made to the lessor," which words were not in the section. It seems to me that the true view of the expenditure of £1,500 and £750 was that it was an expenditure made by a prospective lessee for the purpose of building houses of which he was to have the enjoyment for $94\frac{1}{2}$ years, and that the benefit which the landlord obtained was the reversion in the houses at the end of $94\frac{1}{2}$ years, together with the advantage of having the rent of the land further secured. The advantage obtained by the landlord does not seem to me to be in the nature of a payment which he was in a position to demand or obtain in respect of his land, but what he did get was the benefit which I have mentioned. I think it would be stretching the words of the section to treat an expenditure on the land as a payment made in consideration of the lease. It is an expenditure on the land from which the proposed tenant himself obtains a considerable benefit.

The third contention before me was that the rent of £24 was a "nominal rent," and that the undertaking to erect buildings and to

expend moneys contained in the agreements of April 24th, 1822, and September 2nd, 1822, constitute, within the words in brackets in Section 13 (2), covenants or undertakings to erect buildings or to expend any sums upon the property the value of which ought to be added in ascertaining the value of the land at the time of granting the lease. In my view the undertakings on the part of Ford contained in those agreements were undertakings to erect buildings and to expend moneys in consideration of the lease, but this leaves the question of whether or not the rent of £24 was a nominal rent, because the value of such undertaking is only to be added where the rent is a nominal one. The £24 clearly was not, and was not contended by the Solicitor-General to be, the full rent of the land and buildings included in the lease.

On behalf of the appellants it was contended that "nominal rent" means rent which was not the full value of the land and buildings at the time of the granting of the lease. On behalf of the Crown it was contended that it meant rent which was a mere token of an acknowledgment of the relation of landlord and tenant, and should be read in the same sense as it is used in the phrase "nominal damages."

It seems to me that the object of the procedure prescribed by Section 13 (2) for the purpose of ascertaining the total value of the land at the time of the original granting of the lease was to simplify the mode of ascertainment. In many cases, as in this case, if the inquiry was as to the actual value at the time it would be necessary to enter into an inquiry which would be extremely difficult if not impossible to carry out after a lapse of a great number of years. If the test of whether or not the rent represents the full value of the property is to be applied, a similar inquiry would have to be entered upon as to the values of property at a remote period, and I think it would be impossible to limit it as Mr. Cave suggested to cases where from the documents it could be seen that the rent was in the nature of mere ground rent or not the full rental value. It is much easier to ascertain from the facts of the case whether or not the rental value was a mere acknowledgment of tenancy. I think the true view is that, for the purpose of simplifying the mode of ascertainment, the test of whether or not covenants or undertakings were to be brought into account is whether or not the lessor obtained what I may call a real rent, or whether he merely got an acknowledgment of his rights as landlord and it was not intended to enter into an inquiry as to whether the actual rent was adequate or not.

I think the question is an extremely difficult one, but in my view "nominal rent" means what I have said, and the £24 which was to be paid in this case can in no sense be called a nominal rent. I therefore think that the judgment of the Referee is right, and that this appeal must be dismissed, with costs.

His Lordship granted leave to appeal.—(29 T. L. R., 631.)

[IN THE COURT OF APPEAL.]

LUMSDEN *v.* INLAND REVENUE COMMISSIONERS.

[JULY 31ST, 1913.]

Reversion—Increment Value Duty—Mode of arriving at Value—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 1, 2, 25.

In a claim for increment value duty it appeared that L. sold certain property on August 23rd, 1910, for £750, subject to a tithe rent of the capital value of £33. The property had been provisionally valued as at April 30th, 1909. This valuation showed the original assessable site value as £105. Between April 30th, 1909, and the date of the sale there had been no variation in the full site value, that value being £228. The gross value of the property was £658. £90 was admitted to represent the amount of deduction for roads to be made under Section 25 (4) (b) of the Finance (1909-10) Act, 1910, from the total value to arrive at the assessable site value.

Held (Swinfen Eady, L.J., dissenting), that in arriving at the increment value of the property the value of the site divested (£228) was to be deducted from the gross value (£658); that the balance so arrived at (£430), plus the £90 for roads, had to be deducted from the purchase price (£750), leaving a sum of £230, which was the site value of the land on the occasion giving rise to the claim for duty; and that duty was exigible on the difference between that sum of £230 and £105, the original site value.

Decision of Horridge, J., affirmed.

The Master of the Rolls, in the course of his judgment, said:—

This appeal raises an important question as to the mode in which "increment value" is to be ascertained on the occasion of a sale of the fee simple in possession. It involves the consideration of several terms used in Section 25 of the Finance (1909-10) Act, 1910—namely, "gross value," "full site value," "total value," and "assessable site value," and perhaps also of "original site value."

"Gross value" is defined in Subsection (1): "For the purpose of this part of this Act the gross value of land means the amount which the fee simple of the land, if sold at the time in the open market by a willing seller in its then condition, free from incumbrances, and from any burden, charge, or restriction (other than rates or taxes), might be expected to realise." There is not much obscurity in this language.

"Full site value" is defined in Subsection (2). Speaking generally, it is the value of the bare land apart from any buildings or trees thereon.

"Total value" is defined in Subsection (3). Speaking generally, it is the gross value reduced by any fixed charges or restrictive covenants or easements.

"Assessable site value" is defined in Subsection (4). Speaking generally, it is the total value less the like deductions as are directed to be

made from "gross value" to arrive at "full site value" and less also certain special allowances which are more or less in the discretion of the Commissioners.

"Original site value" is ascertained as directed by Sections 26 and 27. It is the figure inserted in the provisional valuation unless objection is taken to it.

Increment value duty is charged on the "increment value" of the land on the occasion of a sale or of a death (Section 1), and by Section 2 "increment value" is the amount (if any) by which the site value on the relevant occasion exceeds the original site value as ascertained in accordance with the general provisions of the Act as to valuation.

In case of a sale by an owner of land for a price which may be in excess of the gross value, what is to be done? Section 2, Subsection (2) (a), tells you to take the price paid as the starting point of your calculation; but you are to make "the like deductions as are made under the general provisions of this Part of the Act as to valuation for the purpose of arriving at the site value of land from the total value." These words obviously refer to Section 25 (4). The contention on the part of the Crown, which has been adopted by Mr. Justice Horridge, is that you must follow these plain and unambiguous directions. The contention on the part of the appellant, as stated in the Special Case, is twofold. The increment value is either (a) the difference between the original assessable site value and the assessable site value on the occasion, or (b) the difference between the original full site value and the full site value on the occasion. Neither of these contentions seems to me consistent with the express provisions of the Act. The former, by reason of the words in brackets at the end of Section 25, to which I refer more in detail hereafter; the latter, by reason of the words in Section 2 and Section 25, to which I have already referred.

But another suggestion deserving careful consideration is made by Lord Justice Swinfen Eady in the judgment which he is about to read. It is that there is no necessity to make and no justification for making a new gross value on the occasion, and that when the actual price paid has been ascertained it is unreasonable to attempt to guess what the land might be expected to realise. I am unable to accept this view. It seems to me inconsistent with the language of the statute. The actual price paid may be either greater or less than would have been reasonably expected. To substitute actual price for "gross value" or "total value" is to effect a complete change in the scheme of the statute.

I am aware that the construction which I feel driven to adopt has the effect of taxing builders' profits. It is not for me to consider the policy of the Act. My duty—and it is by no means an easy duty—is to discover the true effect of the language used by the Legislature in expressing its intention. I agree with Mr. Justice Horridge on this point.

I have dealt with the arguments on general principles and without reference to the particular figures stated in the Special Case, which are accurately worked out by Mr. Justice Horridge. The case finds that there had been no variation in the full site value between April, 1909, and the date of the sale in August, 1910, and that the purchase price (£750)

exceeds the gross value (£658). I cannot regard these figures as in any way affecting the application of the principles which I have attempted to lay down.

A further argument was raised upon some words at the end of Section 25: "Any reference in this Act to site value (other than the "reference to the site value of land on an occasion on which increment duty is to be collected) shall be deemed to be a reference to the assessable "site value of the land as ascertained in accordance with this section." It seems to me that the words in brackets expressly refer (*inter alia*) to Section 2 (2) and negative the idea that "site value" in that section means "assessable value."

There are, however, certain observations in the recent case in the House of Lords of *Herbert's Trustees v. Inland Revenue Commissioners* (50 S. L. R., 569) which demand consideration. The question in that case was whether "assessable site value" can be a minus quantity, and it was held that it might be. In the course of the argument against the Crown a point was made under Section 3 (5), and it was said, how can you give effect to a provision which is intended to give the owner a benefit, in certain circumstances, of a sum equal to 10 per cent. of a minus quantity? And it was argued that therefore the assessable site value must be a positive quantity. The Lord Chancellor dealt with this argument at page 572, but with the most profound respect I have not been able to fully appreciate his view. Lord Atkinson, at page 576, expressed his inability to solve the difficulty which may arise under Section 3 (5). Lord Shaw, on page 579, and Lord Moulton, at page 582, thought the difficulty might be solved by referring to the words in brackets as justifying the view that "site value" in Section 3 (5) means full site value and not assessable site value. Their observations were not necessary for the decision of the appeal before the House, and neither the Lord Chancellor nor Lord Atkinson expressed his concurrence with those observations.

In these circumstances I feel at liberty, and, indeed, bound, to exercise my own judgment, and to hold that there is nothing in this fresh point in favour of the appellant. In my opinion the appeal must be dismissed.

Lord Justice Kennedy: This case presents for our solution a question of intricacy, which has arisen as to the application of Sections 2 and 25 of the Finance (1909-10) Act, 1910, to a set of facts stated by a Referee in the form of a Special Case. It is, I think, of the first importance that in seeking the solution one should adhere to the principle stated by the Lord Chancellor early in the course of his judgment in the recent case, cited to us by Counsel, of *Herbert's Trustees v. Inland Revenue Commissioners* (50 S. L. R., 569, at p. 570): "The duty of a Court of Law is simply "to take the statute it has to construe as it stands, and to construe its "words according to their natural significance. While reference may "be made to the state of the law and the material facts and events with "which it is apparent that Parliament was dealing, it is not admissible to "speculate on the probable opinions and motives of those who framed the "legislation, except in so far as these appear from the language of the "statute. That language must, indeed, be read as a whole. If the "clearly expressed scheme of the Act requires it, particular expressions

“ may have to be read in a sense which would not be the natural one if they could be taken by themselves, but, subject to this, the words used must be given their natural meaning, unless to do so would lead to a result which is so absurd that it cannot be supposed, in the absence of expressions which are wholly ambiguous, to have been contemplated.”

The problem set in the present case is to ascertain upon what amount, if any, the increment value duty created by Section 1 of the Finance Act ought to be paid by Mr. Lumsden, the appellant, upon the occasion of his selling the fee simple of a dwelling-house and shop. All the relevant statutory provisions for the ascertainment of the increment value are to be found in Sections 2 and 25 of the Act, and in regard to facts and figures we are bound to accept those which appear in the Special Case and are cited in full at pages 346-349 of the report of this case in the Court below before Mr. Justice Horridge ([1913], 1 K. B., 346). We start, therefore, with the following data which are given in the Special Case: (1) Assessable site value in April, 1909, at the time of the provisional valuation under the Act, £105; (2) full site value, as defined by Section 25 (2) both in April, 1909, and in August, 1910—the time of sale—£228; (3) gross value, as defined by Section 25 (1) at the time of sale, £658; (4) deduction to be made from total value, according to Section 25 (4) (b), in respect of roads to be made, £90; (5) the consideration for the transfer on sale in August, 1910, £750; (6) capital value of tithe, £33.

According to the contention, and, as I think, the correct contention, we ought now to turn to the Act itself to find what it prescribes for the proper calculation of increment value. Section 2 (1) enacts that on the occasion, such as the sale in the present case, on which, under Section 1 of the Act, increment value duty is to be collected, the increment value upon which the duty is to be collected is to be deemed to be the amount (if any) by which the site value of the land at that time exceeds the original site value. The original site value under Section 25 (4) means in the present case the assessable site value in April, 1909, which was, as the Special Case states, £105. We have therefore this unquestioned figure as one of the two figures upon the difference between which the duty is to be collected, and we have only to find the other figure—that is to say, the site value of the land on the occasion of the sale. Section 2 (2) (a) directs us as to the method of finding this site value. It is, according to that section, to be taken to be the value of the consideration for the transfer, “subject to the like deductions as are made under the general provisions of this Part of this Act as to valuation for the purpose of arriving at the site value of land from the total value.” Therefore, the value of the consideration for the transfer being £750, all that we have to do in order to arrive at the site value on the occasion is, first, to ascertain what are the deductions prescribed in this part of the Act for the purpose of arriving at the site value of land from the total value, and then to make the like deductions from the sum of £750: “The general provisions of this Part of this Act” are the provisions of Section 25 (4). That section in five subsections, (a), (b), (c), (d), and (e), enumerates a series of deductions to be made for the purpose of arriving at the assessable site value of land from the total value; and assessable site value according to the enactment

contained in the close of this same section is to be understood wherever site value is referred to in the Act, with one exception, namely, where site value on the occasion is referred to. With heads of deduction under Subsections (b), (d), and (e), we have no concern in the present case, for the reason, it must be presumed, that there was, in the opinion of the Referee, no evidence before him which could justify a deduction under any of these heads. But he has in the Special Case given us the figures for the deductions to be made in the present case under Subsections (a) and (b). Subsection (a) directs a deduction of the same amount as is to be deducted for the purpose of arriving at full site value from gross value. The Special Case fixes the gross value in the case of this property at the time of the sale at £658. It also fixes the full site value at the same time at £228. The difference between those two figures is £430, and that sum therefore represents the deduction to be made according to the clear terms of the provision contained in Section 25 (4) (a).

Subsection (b) creates a class or head of deduction under which falls the sum of £90 for roads to be made, as stated in the Special Case. The addition of this sum of £90, being the deduction under Subsection (b), to the above-mentioned sum of £430, being the deduction under Subsection (a), so as to produce a total sum of £520, represents in the language of Section 2 (2), in the circumstances of the present case, "the like deductions" as are made under the general provisions of this part of this Act as to "valuation for the purpose of arriving at the site value of land from the total value." Therefore, under Section 2 (2), if we subtract this total sum of £520 from the sum of £750, which is "the value of the consideration for the transfer," we have ascertained in strict obedience to the directions of Section 2 (2) the site value of this land on the occasion on which increment duty is to be collected, and that site value is £230. It follows, inasmuch as the original site value, as stated in the Special Case is £105, that the increment value on the occasion of the sale of the fee simple of this property in August, 1910, was £125, the difference between £230 and £105, or, as Section 2 (1) expresses it, the amount by which the site value of the land on the occasion of the sale exceeded the original site value. This result, for which the Crown contends, is that to which, as I think, we are guided by proper adherence to the principle of interpretation enunciated by the Lord Chancellor in the passage from his judgment in *Herbert's Trustees v. Inland Revenue Commissioners* (*supra*), which I have quoted, and which has been adopted by Mr. Justice Horridge in the judgment under appeal. In my opinion his decision ought to be affirmed in this Court.

The appellant, as appears in the Special Case, and in the judgment of the learned judge and as appeared from the argument of his learned Counsel in this court, has put forward alternative contentions, the acceptance of either of which results in the conclusion that the site value of the property in question on the occasion of the sale did not exceed its original site value, and, therefore, that no increment value duty became payable to the Crown.

There are two matters to which I think it is desirable shortly to advert before dealing with these contentions. The first of these matters is the

plausibility which is lent to the conclusion to which the appellant invites the Court to come, namely, that the increment value is in this case zero, by the fact that the amount of the full site value in April, 1909, and in August, 1910, is the same—£228. The Solicitor-General pointed out that this identity of values in 1909 and 1910 is an accident. He says, and no doubt with truth, that in many cases the original full site value and the full site value on the occasion on which increment value has to be calculated would not be the same, and the variance would take effect in arriving at the deduction to be made under Section 25 (4) (a), and the fact of the identity of the amount of full site value in April, 1909, and in August, 1910, in the present case ought not to affect our judgment in faithfully interpreting Section 2 (1) and (2) in regard to it. I agree. The duty of this Court is to apply the provisions of the statute as it stands to certain facts and figures fixed for us by the Special Case, whatever may be the result. At the same time, I feel myself in justice forced to admit that on those figures the application of the statute does apparently in the present case, in which the full site value is, both in 1909 and 1910, identical, involve, as a result, the inclusion in the increment value of something which is, or at all events may be, other than pure site value. But, if this be so, it is for the Legislature, if it thinks fit, to enact a corrective alteration.

The second matter to which I desire to advert is certain language used by Lord Shaw and Lord Moulton in the judgments delivered by their Lordships respectively in *Herbert's Trustees v. Inland Revenue Commissioners* (*supra*). Dealing with Section 3 (5), both the noble Lords, if I rightly appreciate that which was said by them as it is stated at pages 579 and 582 of the *Scottish Law Reporter*, expressed the opinion that the words "site value" in Section 3 (5) of the Act must not be understood as meaning assessable site value. Such opinions are, I need not say, of very great importance, but we have not on this appeal to consider Section 3 (5), and, further, the decision of the House of Lords in no way involved or depended upon the acceptance of those opinions. That decision, reversing a judgment of the Valuation Appeal Court, was that the assessable site value of land within the meaning of the Finance Act might be a minus quantity. The opinions in question were, as I follow the reasoning, elicited from Lord Shaw and Lord Moulton by an argument of Counsel for the respondents in that case which was based upon a difficulty which he had contended would arise in the application of Section 3 (5) in the event of the decision being that to which the House of Lords ultimately came. They cannot, I think, rightly be treated as opinions which ought to govern our judgment on the very different question arising on other sections of the Act which is raised by the present appeal.

I turn now to the alternative contentions, as I understand them, which have been put forward by the appellant. The first, referred to as (b) in the Special Case, is that the Court ought to look only at the original full site value of £228 in 1909, and the full site value of £228 in 1910, and, as they are the same, to hold that there is no increment value. Another contention appearing in the Special Case, which is dealt with by Mr. Justice Horridge at page 353 of the report of this case in the Court

below ([1913], 1 K. B., 346), is that the occasional site value is the full site value under Section 25 (2) ; that this full site value being £228, you ought, in order to get at the site value on the occasion of the sale, to deduct from it the £90 for roads and the £33 for tithe, whence results the figure of £105, showing no increase over the original assessable site value. As to each of these contentions, I am unable to reconcile it with the directions for the method of arriving at the site value on the occasion of the sale which are specified in the Act. Each of them excludes from the calculation of the increment value, as the contentions are there stated, the value of the consideration for the transfer which Section 2 directs, subject to certain deductions from it, to be taken as the site value, where the occasion is a transfer on sale of the fee simple, for the purpose, or at all events with the result, possibly, of bringing into the constitution of the taxable increment value, not merely an increase of site value resulting from external circumstances, but also, to some extent, the profit of a fortunate sale at an abnormally high price, such as, in view of the gross value of £658 found in paragraph 6 of the Special Case, the sale at the price of £750 seems to have been in the present case. If I appreciated correctly the arguments before us, the principal contention on the respondents' behalf, as placed before this Court, is that which is set out in the judgment of Mr. Justice Horridge as printed on pages 350 and 351 of the report in the Law Reports. In this the value of the consideration for the transfer—the sum of £750—is taken into account in the calculation, but, as it appears to me, in a way which is not warranted by Section 2 of the Act, or is in accord with the finding in the Special Case, paragraph 6, that the gross value was £658. The method pursued is as follows: £750 being the price of the land with the incumbrance or charge of the tithe upon it, the capital value of the tithe, £33, must be added to that figure in order to arrive at the gross value as defined by Section 25 (1) of the Act. Therefore, in order to obtain the figure referred to in Section 25 (4) (a) it is from this figure of £783 that you must subtract the agreed figure of full site value—£228—and the resulting difference is £555. This sum of £555, with the addition of the figure of £90 for roads, represents the deductions which, in accordance with the provisions contained in the concluding paragraph of Section 2, and in Section 25 (4) of the Act, are to be made from the total value in order to arrive at the assessable site value on the occasion of the sale. The actual sale price, £750, represents, it is said, the total value as defined by Section 25 (3) because it is the price subject to the tithe. Deducting, therefore, from £750 the sum of £645, which is obtained by the addition together of the deductions of £555 and £90, you get £105 as the assessable site value at the time of the sale, and, as that was also the original site value, it necessarily follows that there is no increment value upon which duty can be charged.

With all respect to those who thus argue, it appears to me that there are at least two serious flaws in the reasoning. I see no right to assume that the actual sale price is to be taken as representing total value ; and the assumption that £783—*i.e.*, the sum of the sale price and the capital value of the tithe—is to be taken as representing gross value appears to me to be in absolute contradiction with one of the express findings in the

Special Case, which is in paragraph 6, that the gross value is £658. We are not at liberty, I think, to say that the gross value is something different, nor does it appear to me to be a finding necessarily inconsistent with the fact that a buyer came forward who was willing to pay £750, and to incur the burden of the tithe. In regard to the contention of the appellant, the criticism of Mr. Justice Horridge, which appears on page 351 of the report of this case, seems to me to be just: "I do not think I can adopt the argument put forward on behalf of the respondent"—he is the appellant on the appeal to this Court—"as I think it violates the provisions of the Act. Under Section 2 the consideration money is to be subject to the like deductions as are made under Section 25, and in order to introduce the purchase money as distinguished from the gross value, you must first assume that the purchase price is to be substituted under Section 25 (3) for the total value of the land, for which I can find no justification, especially as the case distinctly finds that the purchase price exceeds the gross value under Section 25 (1) and, therefore, exceeds the total value under Section 25 (3). Even if this is done, you have then got to ascertain the gross value by adding the tithe rent-charge to the total value, whereas the section provides that the first thing to be ascertained is the gross value, and the total value is ascertained by deduction from it."

These observations appear to me to be well founded. I conceive that this Court is not entitled, because the statute in Section 2 (2) (a) directs us to ascertain the site value on the occasion by making certain deductions from the sale price to substitute in ascertaining the amount of these deductions in accordance with Section 25 (4), the sale price for the gross value which is expressly prescribed in Section 25 (4) (a) as an element in the process, and which is found for us in this case to be £658. We are not at liberty, to put it shortly, to depart from the directions of the statute or from the figures stated in the Special Case. In my opinion this appeal must be dismissed.

Lord Justice Swinfen Eady, dissenting, said in the course of his judgment:—

By Section 2, Subsection (2) (a) in order to ascertain "the site value on occasion," when the occasion is a transfer on sale of the fee simple, as in the present case, you start with the value of the consideration for the transfer. From this amount you are to make certain deductions; and these are to be "the like deductions," as are made under the general provisions of this part of the Act as to valuation, for the purpose of arriving at the site value of land from the total value. Section 25, Subsection (4), provides for the deductions which are to be made from the total value for the purpose of arriving at the "assessable" site value, and by the last paragraph of that subsection any reference in the Act to site value means the assessable site value as ascertained in accordance with Section 25, unless such meaning is excluded by the words within brackets in the last paragraph. Section 26 (1) provides that a valuation of all land in the United Kingdom is to be made, and a value is to be estimated as on April 30th, 1909. When once the assessable site value or original site value has been fixed as of that date, it has been so fixed once for all and remains a constant

quantity. "The like deductions" which are directed to be made by Section 2 (2) are therefore like deductions to those which are directed to be made from total value for the purpose of arriving at "assessable" site value, unless such meaning is excluded by the words between brackets in the last paragraph of Section 25 (4). In my opinion the proper construction of the words between brackets is that they should be read as meaning other than "site value on occasion," in other words, that any reference to "site value" means to "assessable site value," unless the context shows that "site value on occasion" is referred to. I therefore construe Section 2 (2) as containing a direction to make the like deductions from the value of the consideration for the transfer as are made under Section 25 (4) from total value for the purpose of arriving at assessable site value. It will be observed that the direction is to make "the like deductions" and not "the same deductions." The deductions are those specified in Section 25, Subsection (4), Clauses (a), (b), (c), (d), and (e), or such of them as may be applicable. After making these deductions from "the value of the consideration for the transfer," the remainder of this consideration is "the site value on occasion," upon which increment value duty is payable, so far as it exceeds the original site value.

This, in my opinion, is the true construction of the statute. There is no difficulty in carrying out its provisions on this construction; wherever the site value on occasion exceeds the original site value, the amount of the increment is ascertained, and duty at the rate of £1 for every complete £5 of the increment value is payable upon it, subject to the reduction allowed under Section 3, Subsection (5). The Special Case states that there was no variation in the "full site value" between April 30th, 1909, and August 23rd, 1910, and that the value was £228 on each date. It was also admitted that £90 represented the amount of deduction for roads to be made under Section 25 (4) (b), and that the capital value of the tithe was admitted to be £33. On these figures, which are identical on each of the two occasions to be compared, there is and can be no real difference between present and past site value.

This difficulty is not met by saying that in this case the "full site value" happens to be the same at each date, but this is merely accidental, because it is in this case where the "full site value" is the same at both the material dates, that an increased site value of £125 is claimed. It is not difficult to see how this rather astonishing result is brought about.

The real crux of the matter lies in the contention that the direction to make "the like deductions" from the "consideration for the transfer" involves a direction to arrive at a gross value of land on the occasion of a sale. The amount by which the "consideration for the transfer" exceeds this gross value, from whatever cause the excess in price may arise, is then said to be increment in site value. The statute does not contain any direction to arrive at a gross value of land on the occasion of sale, and the value of the divested site can be arrived at without doing so. The problem is this. On the basis of a given figure of value what would be the value if divested of all structures and growing things? The problem is

the same, whether the given figure is the consideration on sale or an estimated gross value. Moreover, although for the purpose of the original valuation of all the land in the kingdom it was necessary to arrive at a figure of gross value, by estimation, it is quite a different matter to require it to be done on every sale which takes place and when the consideration for the same is known. A great number of matters enter into the consideration of what sum any particular land might be expected to realise, such as the position of the land, the soil, the nature of any buildings upon it, the demand, and numerous other things. If it were possible for a valuer to be perfectly informed on all these points he would know exactly what the land would realise, and he would expect it to realise that amount. The less he knows of these matters the less able would he be to form a correct judgment, and the greater the difference between what the land in fact realises and what he expected it to realise. It seems strangely anomalous to require after a sale an *ex post facto* valuation of what the land might (erroneously) have been expected to realise. I say erroneously, as, unless the sum to be arrived at differs from the sum actually realised, there is no object in obtaining the valuation. Moreover, the defect of this method is to attribute the whole difference between actual price realised and what the land was expected to realise to an increase in site value. Thus suppose two rival traders, attracted solely by the special suitability of certain buildings for their trade, by bidding against each other run up the price considerably in excess of what the property might have been expected to realise, the whole of the excess would be treated as an increase in site value. Such a result would be quite inconsistent with the opinion expressed by the Lord Chancellor—that the increment value directed to be taxed is simply the difference between present and past site value.

In the case under appeal the alleged increment in site value is really obtained in the following manner:—

The land, subject to a charge of £33 for tithe, was sold for £750; it was only “expected to realise” £658, if free from tithe; therefore there is a gain of the difference between £750 and £658, or £92, and the £33 tithe, or £125 in all. This is claimed as “increment in site value,” although the full site value has remained the same, and the whole increment entirely depends on such figure as the valuer may fix upon as a new gross value. If the statute requires such a valuation it must be made, but I cannot find any direction to make it, and full effect can be given to make the “like deductions” by starting with “the consideration for the “transfer,” and making the deduction from this amount—that is, such deduction as is necessary to ascertain the divested value.

The fact that the full site value was the same on each occasion and the deductions for tithe and for works and capital expenditure the same, negatives any increment in site value, and the process by which an apparent increment was obtained, namely, estimating what the property, if then sold free from incumbrances, might have been expected to realise, deducting this from the consideration for the transfer, and claiming the difference as an increment in the site value, is one not authorised by the statute.

I can find no justification in the statute for the contention that wherever the price realised is greater than would have been reasonably expected the whole of the excess in price is to be deemed to be an increment in site value. I have only to construe the statute by the language used, and I cannot discover any such justification in the direction to make deductions from the consideration for the transfer to arrive at "the site value on "occasion." I am aware that the deduction to obtain a divested value is stated to be £430, but this figure is arrived at upon the basis of a new gross value, which, in my opinion, is erroneous.

I am of opinion that the appeal should be allowed, and that the Special Case should be answered by saying that the appellant was not liable to pay any increment value duty on the occasion in question.—(29 T. L. R., 759.)

[Appeal pending.]

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THE FINANCE (1909-10) ACT, 1910, PART I.

REPORTS

OF

APPEALS HEARD BY REFEREES

SPECIALLY PREPARED FOR

*The Surveyors' Institution, the Auctioneers' and Estate Agents' Institute,
the Land Agents' Society, and the Central Land Association*

BY

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TOGETHER WITH

REFERENCES TO DECISIONS OF THE COURTS OF
LAW UNDER PART I. OF THAT STATUTE.

PART 4.

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THE FINANCE (1909-10) ACT, 1910.

PART I.

REPORTS

OF

APPEALS HEARD BY REFEREES.

Before GEORGE HENSON, ESQ., *Referee*, 4th June, 1913.

THE REPRESENTATIVE CHURCH BODY OF IRELAND *v.* THE
COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—LANDS BELONGING TO REPRESENTATIVE CHURCH BODY LEASED TO INCUMBENT OF PARISH—OCCUPIER—GLEBE LANDS USED FOR CHURCH PURPOSES—LIABILITY FOR DUTY—EXEMPTION OF LAND HELD FOR CHARITABLE PURPOSES—FINANCE (1909-10) ACT, 1910, s. 37 (1).

This was an appeal on behalf of the Representative Church Body (Ireland) against the assessment of the land of Raheny Glebe, near Dublin. The appellants contended (1) that the glebe originally contained 1a. 0r. 36p. of garden and 5a. 0r. 18p. additional land, vested in the Representative Church Body in 1874; (2) that the lands were still held as a glebe by the incumbent, who had occupied that position since 1873; (3) that the rules provided that the incumbent paid no rent, but paid all taxes, together with a sum of 15 per cent. on the commutation value of the residence for repairs, getting a refund if less be expended; (4) that by amended rules, dated 1879 and 1881, a lease was taken out in 1881 providing that the glebe should be held during the incumbency with a covenant against assignment, subletting, or letting in conacre, £1 2s. 6d. being paid yearly to the Representative Church Body for insurance, and £3 7s. to the guarantee fund; and (5) that repairs, when necessary, were provided for out of parish funds subject to the supervision of the Representative Church Body. The appellants claimed exemption under Section 37 of the Finance (1909-10) Act, 1910.

The Commissioners of Inland Revenue contended that in Form IV., under the signature of Mr. A. F. Maude, Secretary to the Representative Church Body, the incumbent, Rev. E. C. Hayes, was stated to be the occupier, and that no objection was made on page 2 of the form, where

objections were invited. They further contended that the lease of 1881 constituted the incumbent an ordinary tenant, and that the user of the premises was for private use or profit, and therefore not liable to exemption.

The Referee gave his decision as follows :—

The land of Raheny Glebe being held on behalf of a governing body constituted for the purposes and being used by that body for the purposes of the body, no undeveloped land duty is chargeable in respect thereof.

The Referee stated a case for the decision of the King's Bench Division, but the case has been withdrawn.

Mr. E. Coll, instructed by Mr. Richard Martin, appeared for the Commissioners of Inland Revenue.

Mr. E. S. Murphy, instructed by Messrs. Maunsell Darley & Orpen, appeared for the Representative Church Body.

Before JOHN LOPDELL, ESQ., Referee, 13th June, 1913.

JOHN HALL *v.* COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—EXCESSIVE VALUATION—LAND IN CULTIVATION NOT SUITABLE FOR BUILDING—FINANCE (1909-10) ACT, 1910, SS. 17 & 18, S. 33 (1) (A) (B).

This was an appeal against provisional assessment of land for building purposes on the ground that the valuation was excessive, as the land was unsuitable for such purposes, and had been under cultivation for six years previously.

The Referee gave his decision as follows :—

The appellant not having appealed as in manner provided under the provisions of Section 27 (2) against the Provisional Valuation No. 2351, which fixed the total value at £200 and site value at £200, I am of opinion that under the provisions of Section 33 (1) (a) and (b) the appeal cannot be sustained, and that the appellant is liable for the amount of the duty claimed.

In the event of my decision as regards the legal aspect of the case being incorrect on the facts, and having viewed the premises, I am clearly of opinion that the lands in question are not liable for undeveloped land duty under the provisions of Sections 17 and 18 of the Finance Act.

Before JOHN LOPDELL, ESQ., Referee, 28th June, 1913.

E. BEWLEY v. COMMISSIONERS OF INLAND REVENUE.

**PROVISIONAL VALUATION—TOTAL VALUE—SITE VALUE—
FINANCE (1909-10) ACT, 1910.**

In this case the appellant appealed against the total value and site value fixed on the provisional valuation, which set out the gross value as £7,075, on the ground that the item of £2,000, the value placed on the building plot of 5 acres, being 20 years' purchase of £100 an acre for said 5 acres is, and should be, reduced to £1,666 13s. 4d., being 16 $\frac{2}{3}$ years' purchase of said £100 per acre. The total deductions were £4,000, making the deductions from the gross value to arrive at the full site value, £3,075. In addition to this there was £400 for works executed, which made the total deductions £3,745, so that the assessable site value appealed against was £3,600.

The decision of the Referee was as follows :—

Having heard the case and inspected the land, I decide that the value of the building plot of 5 acres, forming the subject of the above appeal, has been correctly fixed at the sum of £2,000. I also decide that the expenses actually incurred by the Commissioners of Inland Revenue, in reference to the hearing of this appeal, should be paid by the appellant.

*Before THOMAS BINNIE, ESQ., Referee, 24th July and
15th December, 1913.*

**WILLIAM BEATTIE v. THE COMMISSIONERS OF INLAND REVENUE
AND OTHERS.**

**PROVISIONAL VALUATION — OWNER — DELAY IN MAKING PRO-
VISIONAL VALUATION — DATE AT WHICH OWNER TO BE
ASCERTAINED — CONFLICTING INTERESTS OF VENDOR AND
PURCHASER—FINANCE (1909-10) ACT, 1910 (10 EDW. VII.,
c. 8), ss. 26 (1), 27 (1) (2) (4), & 33.**

Held, that "owner" in Section 27 means the owner at the date when the provisional valuation is made, and not the owner at April 30, 1909.

At Whitsunday, 1911, the appellant, Mr. William Beattie, of Dineiddwg, Milngavie, in the parish of Strathblane, and county of Stirling, purchased

three fields, extending to about 15 acres, adjoining the grounds of his residence, from Mrs. Coats and Mr. John Love, junior, the respondents, who had been owners of the land for some time prior to April 30, 1909. The purchase price, which was £1,650, included a small cottage situated in the corner of one of the fields and not embraced in the appeal. The provisional valuation of the land was served on December 29, 1911, and after some negotiations an amended provisional valuation was served both upon the appellant and the respondents on December 26, 1912. The respondents acquiesced in the amended provisional valuation, but the appellant objected to the values contained in it, and, as the Commissioners refused to amend it to his satisfaction, he lodged a notice of appeal. The values in the amended provisional valuation were as follows:—

| | £ | s. | d. |
|---|-------|----|----|
| Original gross value | 1,710 | 10 | 0 |
| Original full site value | 1,710 | 10 | 0 |
| Deductions from gross value to arrive at total value | 130 | 10 | 0 |
| Original total value | 1,580 | 0 | 0 |
| Original assessable site value | 1,580 | 0 | 0 |
| Value of agricultural land for agricultural purposes | 280 | 0 | 0 |

At the first hearing of the appeal, which took place on July 24, 1913, the respondents raised the preliminary point of law that no appeal could be taken by the appellant against the amended provisional valuation, because he was not the owner of nor a person interested in the land at April 30, 1909. The Referee reserved the question of the competency of the appeal and heard parties on the merits. After consideration he desired the parties to re-argue the preliminary question. The rehearing took place on December 15, 1913.

On the question of the competency of the appeal, the respondents, Mrs. Coats and Mr. Love, submitted that since, under Section 26 of the Act, the valuation was to be made as at April 30, 1909, the word "owner" in Section 27 must refer to the person who was owner at that date. The appellant did not acquire the land until two years later. At April 30, 1909, he had no interest in the land. The delay in serving the valuation was due to pressure of work in the valuation department. By delaying the valuation the Commissioners could not prejudice the rights of the respondents. The respondents had acquiesced in the amended provisional valuation, which had now become final and could not be disturbed.

The Commissioners of Inland Revenue (while maintaining the correctness of the amended provisional valuation) submitted that the appeal was competent. The appellant was the owner within the meaning of Section 27, and, as such, bound to be served with a copy of the provisional valuation. The amended provisional valuation had been also served on the respondents as persons interested in the land, without any formal demand, under Section 27 (5), merely as an act of equitable administration. An Act of Parliament spoke from its date, and was not retrospective unless there was something in the language, context, or objects of the Act showing a

contrary intention. (*Gardner v. Lucas*, 5 R. (H.L.), 105.) The words used must be given their natural meaning (*Herbert's Trustees v. Inland Revenue*, 1913, S. C. (H.L.), 34; [1913], A. C., 826, *per* Haldane, L.C.); and words cannot be imported into a statute which are not there (*Nuth v. Tamplin* [1881], L. R., 8 Q. B., 247; 45 L. T., 652, *per* Denman, J., at p. 653). Owner means person who is owner, not *was* owner, otherwise it would be necessary to read in "owner as at 30th April, 1909." The expression must be interpreted as meaning the owner at the date when the Act contemplated by the statute, *i.e.*, making the valuation, comes to be performed by the Commissioners. This view is supported by judicial authority. (*Arrow Shipping Company v. Tyne Improvement Commissioners* [1894], A. C., 508.) Section 26 (1) merely fixes the date at which the value is to be estimated in order to secure uniformity of valuation. The valuation is to be made "as soon as may be." The Act was not passed till April 29, 1910, almost a year after April 30, 1909, and the valuation must of necessity take a long time to complete. The owner at April 30, 1909, may have died or disappeared before the provisional valuation is made, and in this way the Act would be unworkable. Section 26 (2) provides that the "owner" of, and any person receiving rent in respect of, any land shall furnish when required a return to the Commissioners. Only the owner or the person receiving rent when the return is called for is in a position to furnish a return; no one else has the material to enable him to do so. Section 31 (1) provides that every person who pays (not paid) rent shall furnish the Commissioners with a return of the name and address of the person to whom he pays rent. This clearly points to the owner being the owner at the date of the valuation. Section 31 (4) provides that the Commissioners are to serve the provisional valuation or any other notice on the "owner" by sending it by post to the address furnished to the Commissioners under the section. That can only mean the owner when the valuation is made. To hold otherwise would render the procedure ridiculous, as many owners at April 30, 1909, would be no longer in existence. Words must be construed in a way which will render the procedure sensible and not absurd. (*Hornsey Local Board v. Monarch Investment Society*, 24 Q. B., 1, *per* Esher, M.R.)

(On behalf of the appellant the arguments submitted for the Commissioners were adopted, and it was further argued that in any event the appellant was a person "interested in the land." The definition of "interest" in relation to land occurring in Section 42 included various things, but did not exclude the appellant's interest. "Interested in the land" had a wider meaning than the statutory definition of "interest." The appellant, while maintaining he was the owner for the purposes of the appeal, did not dispute the respondent's right to appear and be heard in support of the provisional valuation.

(On the merits of the appeal, the respondents and the Commissioners both maintained that the provisional valuation was correct. The appellant maintained that the total value and site value were excessive, as he had been willing to pay and had actually paid a very full price for the ground in order to secure the amenity of his mansion-house and pleasure ground.

The Referee, in his award (dated February 6, 1914), after stating the facts and the main arguments of the parties, proceeds :—

“I decide that, on a true construction of the Act above cited, the contention in law advanced on behalf of the respondents, Mrs. Coats and Mr. Love, is incorrect, and I decide that the appellant is entitled to appeal against the said amended provisional valuation.

On the merits of the case I decide that the values stated in the said amended provisional valuation are incorrect, and I further decide :—

| | £ | s. | d. |
|---|-------|----|----|
| That the gross value is one thousand two hundred and forty-eight pounds ten shillings. | 1,248 | 10 | 0 |
| That the full site value is one thousand two hundred and forty-eight pounds ten shillings. | 1,248 | 10 | 0 |
| That the deductions from gross value to arrive at total value are agreed by the parties at one hundred and thirty pounds ten shillings. | 130 | 10 | 0 |
| That the total value is one thousand one hundred and eighteen pounds. | 1,118 | 0 | 0 |
| That the assessable site value is one thousand one hundred and eighteen pounds. | 1,118 | 0 | 0 |
| That the value of agricultural land for agricultural purposes is three hundred and twenty pounds. | 320 | 0 | 0 |

I find the appellant, William Beattie, entitled to his expenses in this appeal, and decide that two-thirds thereof shall be borne by the respondents, Mrs. Coats and John Love, junior, and one-third by the Commissioners of Inland Revenue ; allow the appellant to lodge an account of his expenses with the auditor of the Court of Session, and remit the same to the said auditor for taxation and report.

If the Court determine that the contention in law advanced on behalf of the respondents, Mrs. Coats and Mr. Love, is correct, then I decide that the present appeal is incompetent, and that the values stated in the said amended provisional valuation have become final and are not subject to my review ; I find the respondents Mrs. Coats and John Love, junior, entitled to their expenses in this appeal, and decide that one-half thereof shall be borne by the appellant William Beattie, and one-half by the Commissioners of Inland Revenue ; allow the respondents Mrs. Coats and Mr. Love to lodge on account of their expenses with the auditor of the Court of Session, and remit the same to the said auditor for taxation and report.

Quoad ultra, I continue the appeal.”

For the appellant : James Ness & Son, Glasgow.

For the respondents, Mrs. Coats and John Love, junior : Crawford, Herron & Cameron, Glasgow.

For the Commissioners of Inland Revenue : H. Watson, of the Solicitor's Department, Inland Revenue.

Before D. H. MACNICOLL, ESQ., Referee, 6th October, 1913.

MRS. C. ALBRECHT v. THE COMMISSIONERS OF INLAND
REVENUE.

UNDEVELOPED LAND DUTY—DEVELOPED AND UNDEVELOPED LAND
—SITE VALUE OF UNDEVELOPED LAND—LAND DEVELOPED BY
ERECTION OF DWELLING-HOUSE—FINANCE (1909-10) ACT, 1910
(10 EDW. VII., c. 8), ss. 16, 17.

This was an appeal against assessments for four years to undeveloped land duty on property known as Brooklea, Ledsham, which comprised a residence and outbuildings, lodge, buildings, and land, and had an area of 21·54 acres. The provisional valuation, served on February 27, 1913, showed gross and total values, £12,000, full site and assessable site values, £4,300, value for agricultural purposes, £970. Since then the gross value had been altered to £12,500. The only dispute was as to the assessments to undeveloped land duty, which were served on March 29, 1913, and showed site value, £4,300; deductions, £2,000, viz., agricultural value, £970; land occupied with buildings, £1,030; value chargeable, £2,300; duty, £4 15s. 10d.

Mr. Allen said that the Commissioners, in serving the notice of assessment in this form, had not complied with the statute. By Section 16 the duty had to be levied on undeveloped land. It had to be determined how much the dwelling-house developed. Under Section 16 (3) the Commissioners had to find the site value of the undeveloped land, and this they had not done. The hereditament in this case comprised both developed and undeveloped land. Under Section 17 (4) the appellant was allowed 5 acres exemption, in addition to the house, lodge, and land covered by buildings. The notice of assessment was an absolutely misleading document, and would lead people to think that they were being charged on 21½ acres. It was quite impossible to tell on what amount of the site value they were being assessed. The assessment had been made on the figures of the provisional valuation, and the assessable site value of £4,300 was the assessable site value over the 21½ acres. The appellant was not told what the Commissioners had deducted. A road ran along the front and at the back there was a railway, but the Commissioners seemed to have taken all the land as of the same value. They had not shown in the assessment what was developed and what undeveloped land, though they could have made a valuation and apportioned the developed and undeveloped parts, and an ordinary person could not possibly know what the assessment meant. Another point,

which he did not propose to take at length before the Referee, was that the duty was to be charged only on undeveloped land, and the area which a house developed might be more than the 1 or 5 acres allowed by Section 16 (4). He asked the Referee to find that the 3·775 acres in front of the house were in fact also developed by the erection of the house.

Mr. Kingdon called attention to the surrounding country, which was all given up to mansions. Nobody would buy the front piece of land, and that was why the valuation had been made on a uniform basis. By Section 29 (2) the Commissioners were to make such apportionments as they considered necessary for collecting or assessing undeveloped land duty, or as they were required to make by any person interested in the land; in this case no requisition was ever made, and there was no need for apportionment; the whole property was valued uniformly, so that it was a pure question of mathematical division. The statute and the notice of assessment conveyed all that was required in the way of information. Nothing in the statute made it incumbent on the Commissioners to say what area was exempted. If the appellant wanted more information she could have asked for an apportionment, and she did not, but thought that she could say that until the Commissioners had made an apportionment they could not make an assessment. Under Section 33 (1) the Referee was not competent to deal with this point, because there was no appeal against the amount of the assessment, no question of apportionment of duty, and, according to the appellant, this was not an occasion on which the Commissioners were to determine or might determine. In view of the provisions of Sections 16 (1), (2), and (3), 27 (6), and 17 (4), the appellant's contention resulted in there being an express exemption from duty of what was already exempt. The exemption in Section 17 (4) was inserted because, otherwise, directly one got outside the area of the house the land would be chargeable. As there was an express limit of 5 acres, one could not exempt beyond 5 acres plus the site of the house, which was the only part developed by the erection of the house.

Mr. Allen, in reply, said that a house must develop a certain portion of land outside it; how much, depended on the locality. If it had been meant that only the site should be deemed developed, Section 16 (2) would have read "developed by the erection of dwelling-houses on it." The statute intended to tax cases where the land was not put to its best uses. Section 17 (4) meant that the smallest cottage developed 1 acre, and the 1 and 5 acres were the minimum amounts to be allowed as developed. The word "dwelling-house" had a very wide meaning. (*Steele v. Midland Railway*, 1 Ch. App., 275; *Marson v. London Chatham and Dover Railway*, 6 Eq., 101; *Richards v. Swansea Improvement and Tramways Company*, 9 Ch. D., 434.) How could the Commissioners under Section 29 (2) make an assessment of developed and undeveloped land as one unit? This matter was appealable under Section 33 (1), as the Commissioners had determined that the notice of assessment was a proper one.

Award: The decision on appeal in respect of which the annexed notice of appeal has been given is as follows:—

The area of the property in question is 21·540 acres, as shown on the plan attached, and the provisional valuation served on February 27, 1913, gives the

| | | | Amendments asked for. |
|---|--------|-----|--------------------------|
| | £ | | £ |
| Original full site value | 4,300 | ... | 4,650 |
| Original total value | 12,000 | ... | 12,500 |
| Original assessable site value | 4,300 | ... | 4,500 |
| Value of agricultural land for agricul- tural purposes, where different from assessable site value | 970 | ... | 1,100 |

It was stated at the hearing before me that the provisional valuation had now been agreed between the parties, and the only dispute now to be decided was as to the assessment of undeveloped land duty.

The notice of appeal was amended at the hearing as follows:—

Submission (1) That the assessment had not been made in accordance with Section 16 (3), inasmuch as the Commissioners have not found the site value of the undeveloped land, and levied their assessment thereon;

Submission (2) That no apportionment has been made of the site value between the developed and the undeveloped land under Section 29;

Submission (3) That the area of land actually developed is in excess of the allowance (if any) made by the Commissioners.

It was contended on behalf of the respondents that I had no jurisdiction to deal with the question of principle raised by the first two submissions.

I am of opinion that I have jurisdiction to deal with these submissions under Section 38 (1) of the Act.

As to submission (1) I attach the assessment dated March 29, 1913, for year 1909-10. The property is described as Brooklea, Ledsham, area 21·540 acres, site value £4,300, for deductions and allowances (if any) in respect of—

| | £ | s. | d. |
|--|-------|----|-----|
| Expenditure on roads, &c. | | | Nil |
| Increment value duty | | | — |
| Agricultural value of agricultural land ... | 970 | 0 | 0 |
| Land occupied with dwelling-house | 1,030 | 0 | 0 |
| Agricultural land. Tenancy to date shown below | | | Nil |
| Other allowances, as specified below | | | Nil |
| Allowances to avoid charging fractions of 1d. | | | Nil |
| Total deductions | 2,000 | 0 | 0 |
| Net value chargeable with duty | 2,300 | 0 | 0 |
| At $\frac{1}{2}$ d. in the pound | 4 | 15 | 10 |

A note below reads : —

“If you intend to appeal to a Referee against this assessment, you should give notice to the Land Values Reference Committee, at 174, Royal Courts of Justice, London, W.C., and to the Commissioners of Inland Revenue, within thirty days from this date, on forms which will be supplied to you on application to me.”

No application was made for any further particulars of the assessment, but notice of appeal was given, dated April 26, 1913, which notice is attached hereto.

It will be observed the site value works out at practically £200 per acre. At the hearing a plan of the property was put in showing an area of 5.155 acres as developed, valued at £1,030, leaving 16.385 acres undeveloped land valued at £3,270 ; total £4,300.

It appears to me that the assessment has been made in accordance with Section 16 (3) ; the Commissioners exempted 5.155 acres of land as developed under Section 17 (4) in conformity with the Act. If a special apportionment or plan had been desired, it should have been asked for. No suggested apportionment or plan was laid before me for consideration.

As to submission (2). The Commissioners were not required by the appellant to make an apportionment or reapportionment. No suggested apportionment or plan was laid before me for consideration. I am of the opinion that the Commissioners conformed with the Act.

As to submission (3). Section 16 (2) provides that land shall be deemed to be undeveloped land if it has not been developed by the erection of dwelling-houses or buildings for the purposes of any trade, business or industry other than agriculture (but including glasshouses or greenhouses). In the case of buildings erected for the purposes of business and trade, it may be a question of fact in each case as to how much land must be regarded as having been developed by the erection of the buildings. But with regard to dwelling-houses, these are, in my opinion, specially provided for by Section 17, and that section must be read in conjunction with Section 16 (2), so far as the latter section relates to dwelling-houses, and consequently no greater area of land can be regarded as having been developed by the erection of the buildings than the actual area of the land upon which the buildings rest, and that 5 acres in extent is the limit that can be exempted for use as gardens or pleasure grounds in connection with the dwelling-house as provided by Section 17 (4).

And I do order that each party do pay their own costs of and incident to this appeal.

For the appellant : William Allen.

For the respondents : F. W. Kingdon, Assistant Solicitor to the Inland Revenue.

Before H. E. MITTON, ESQ., Referee, 16th October, 1913.

MRS. MICKLETHWAIT *v.* THE COMMISSIONERS OF INLAND REVENUE.

CAPITAL VALUE OF MINERALS—LEASED AND UNLEASED MINERALS
—POWER OF COMMISSIONERS TO APPORTION—FINANCE (1909-10)
ACT, 1910 (10 EDW. VII., c. 8), ss. 23, 29.

Mr. Micklethwait said that the question at issue was one entirely of law with regard to the power of the Commissioners to apportion the capital value of minerals as between leased and unleased seams. The appellant was the owner of 64 acres of minerals at Ackworth Moor Top, Yorkshire. By a lease of June 30, 1910, she let two seams, the Barnsley and the Upper Haigh Moor, to the South Kirkby Collieries, Limited, for sixty years. By Section 23 (2), when minerals were unleased, they were to be treated as of no value unless the owner gave an estimate of their value. In this case the owner did give an estimate, and on September 6, 1911, the original total and capital values were fixed at £5,896 for all the minerals, none being on April 30, 1909, leased. On January 13, 1912, the Commissioners claimed the right to apportion that sum between the leased and unleased minerals, viz., £4,636 for those leased, and £1,260 for those unleased, and the appellant contended that they had no power to make such an apportionment. If they had, then in the case of several seams belonging to one owner, which were worked on the whole at a loss, the Commissioners could claim duty on any one seam on which a profit was being made, as they could apportion laterally and vertically. The apportionment was made under Section 29, but Sections 29 (1) and (2) were primarily intended to deal with surface land, as there was no such thing as an original site value of minerals. The words "each piece of land" in Section 26 (1), and "any pieces of land" in the amending Section 5 of the Revenue Act, 1911, clearly did not apply to minerals. The Commissioners maintained that Section 23 (4) extended the power of apportionment to minerals, but it only did so where the context did not otherwise require, and in this case he submitted that the context did not allow the extension. The case largely turned on the view taken of Section 23 (2), "all minerals shall be treated as a separate parcel of land"; the word "a" was important. By apportioning, the Commissioners were trying to take away from the appellant her right to fix the value of the unleased minerals under Section 23 (2). Section 23 never contemplated a division into separate seams, but referred in terms to the minerals as a whole. The subject must be brought within the letter of a taxing statute. (*Partington v. Attorney-General*, L. R., 4 ; H. L., 100.) The Commissioners could not apportion purely for their own convenience if they were not dealing with separate parcels of land; they could not in effect say that the unleased minerals were worth £1,260, as the Act laid down that they should be worth nothing, unless the owner chose to value them. The allowance in

Section 23 (1) showed that the draftsman was referring to the minerals as a whole. Further, he asked the Referee to say that there was no necessity in this case for an apportionment under Section 29 (2). If apportionment were possible, the whole value should be put on the leased minerals.

Mr. Kingdon said that if the appellant was right, this was not a taxing Act at all, as on a lease or sale of a part of the minerals comparison would have to be made with the original value of the whole, and a mineral owner would never pay anything. By Section 23 (2), "for the purposes of valuation . . . all minerals shall be treated as a separate parcel of land"; Sections 26 and 29 referred to land, and there was no doubt that minerals were a piece of land. When valuation was complete, Section 23 (2) had nothing to do with the subsequent proceedings. According to the appellant, the owner's estimate tied and bound everyone for ever, but the Commissioners were not bound to accept the estimate; they were merely bound to put some value on the minerals instead of none. If there was no power to apportion, one had to compare the capital value of all the minerals with the capital value of a part sold. Section 29 (1) had nothing to do with Section 29 (2); it dealt with the power to aggregate portions that had been valued separately and sold together. It could not be suggested that because the word "parcel" was used in one place and "piece" in another, therefore minerals were not to be regarded as land. When minerals were being worked they were to be treated as a separate parcel of land for the purpose of assessing duty, and that could not be done without apportionment. There was nothing in Section 29 (2) to stop one from substituting capital value for site value in accordance with Section 23 (4). Section 22 (3) was very material; "*the minerals*" referred back to Section 20 (2) (a), and meant that portion of the minerals comprised in the lease, and comparison had to be made with the annual equivalent of the capital value of "*the minerals*," i.e., the minerals comprised in the lease. How could that be done without apportionment? The Commissioners considered it necessary to apportion, and could not arrive at the details of the duty exigible without doing so; and it was ridiculous to come to the Referee and ask him to say whether the Commissioners ought to have considered it necessary. He submitted that the Referee had no jurisdiction to decide the point raised. It was alleged that the Commissioners had no power to apportion, and that the apportionment was a nullity. Nobody could be aggrieved by a nullity. This was not an appeal against an apportionment, for the appellant contended that it was not an apportionment at all. It did not rest with the Commissioners to determine whether they had power to apportion, nor had they so determined. The appellant had not complied with Sections 29 (3) and 27 (2) by stating the grounds of objection and the amendments desired.

Mr. Micklethwait, in reply, said that the Referee had jurisdiction to hear appeals under Section 33 (1) against any apportionment of the value of the land, or against any determination of the Commissioners, and it would be the most convenient method for the Referee to decide the point. Section 29 (1) limited apportionment to separate pieces or parcels of land. Section 23 (2) must be used by the Commissioners if they wished to say

that the leased were separate from the unleased minerals. If the section were applied it must be applied in its entirety, which resulted in the unleased minerals being of no value. That in itself excluded the power of apportionment, as all the value had to be put on the leased minerals. He did not admit that the sale of part of a coalfield was comparable with this case. This was really an attempt to do something which the Commissioners were not entitled to do.

Award: This is an appeal by Mrs. C. M. Micklethwait against an apportionment of the capital value fixed on the provisional valuation of certain minerals.

The appeal was heard by me on October 16 last, when I was asked to consider—

- (1) Whether I had any jurisdiction to hear the appeal, as it was alleged by the Commissioners the appellant had not lodged an objection within the meaning of Section 27 of the Finance (1909-10) Act, 1910;
- (2) Had the Commissioners power to make the apportionment of the capital value fixed on the provisional valuation of certain minerals, which they made and duly served on the appellant on January 13, 1912?

My decision on these points is:—

- (1) I find an objection was not lodged within the meaning of Section 27 of the Finance (1909-10) Act, 1910, and I therefore find that, in accordance with Section 33 (1) (a) of the Act the appeal cannot lie against the apportionment;
- (2) If I am wrong in law as to (1), then I find, after having heard the arguments, and evidence of both parties, that the Commissioners had the power to make the apportionment which they in fact made, and the same was correctly made in the apportionment served on the appellant on January 13, 1912, and numbered M9-1 and M9-2 Ackworth.

I order that the expenses incurred by the Commissioners be paid by the appellant.

For the appellant: St. J. G. Micklethwait, instructed by Newman & Bond, Barnsley.

For the respondents: F. W. W. Kingdon, Assistant Solicitor to the Inland Revenue.

Before THOMAS BINNIE, ESQ., F.S.I., *Referee*, 20th October, 1913.

JAMES LINDSAY'S TRUSTEES *v.* THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—UNIT OF VALUATION—SEPARATE PROVISIONAL VALUATIONS ISSUED—AGGREGATION REQUIRED BY OWNER SUBSEQUENT TO ISSUE OF PROVISIONAL VALUATIONS—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., C. 8) SS. 26 (1) & 33.

Circumstances in which an owner, who had acquiesced in portions of his land being separately valued, was found entitled to have the provisional valuations aggregated before they became final.

The appellants were the proprietors of the estate of Balgray, Glasgow, extending to about 52 acres, and had spent considerable sums on the formation of roads, &c., with a view to feuing for building purposes. With the exception of one small area extending to 0.104 acres, the estate was all in the same occupation. It appeared from certain correspondence which was produced and admitted, that prior to making his valuation the district valuer had approached the agents for the appellants for the purpose of adjusting the divisions of the estate to be adopted as the units of valuation. The agents indicated the portions in which they wished it valued, and six separate provisional valuations were accordingly issued on September 27, 1912. After receipt of these, the agents for the appellants, on reconsidering the position, were of opinion that it was inadvisable to split up the land, as they feared that at some future date the Commissioners might refuse to allow any part of the large expenditure (which had been made on the southern portion of the estate) to be charged against the northern portion, although in point of fact it had been made for the development of the latter also. They accordingly required the district valuer to aggregate the valuations. This he refused to do, and the appellants appealed.

The appellants maintained that if any requirement had been made in terms of Section 26 (1) of the Finance (1909-10) Act, 1910, which was not admitted, it was a mere error, and in any event they were entitled to make or cancel any requirement for separate valuations at any time before the provisional valuations became final.

For the respondents it was argued that a requirement once made under Section 26 (1) of the Act could not be cancelled.

At the hearing before the Referee, the appellants withdrew their appeal against two of the provisional valuations; but maintained that they were entitled to have the four remaining valuations aggregated.

The different values in the provisional valuations were not in dispute between parties.

The Referee decided that the appellants were entitled to have the four properties, Numbers 24/1756, 24/1766, 24/1971, and 24/1973, valued together. He therefore directed that the provisional valuations of the said four properties should be aggregated, and one single provisional valuation thereof served upon the appellants.

For the appellants : D. P. Fleming, advocate, instructed by P. Morison and Son, W.S., Edinburgh.

For the respondents H. Watson, of the Solicitor's Department, Inland Revenue.

Before SIR ALEXANDER STENNING, *Referee*, 22nd October, 1913.

MISS M. E. MATTHEWS *v.* THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—GROSS VALUE—FULL SITE VALUE—
FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 25.

Mr. Allen said that the appeal was against the site value set out in the provisional valuation of 5, Trinity Square, 1, Muscovy Court, and 11 and 12, Savage Gardens, E.C., on the ground that the gross value was insufficient. In June, 1910, Mr. Ellis, acting as valuer for the Port of London Authority, opened negotiations for purchasing the property, and was told that the price asked was £30,000. The appellant had no idea who the prospective purchaser was. On July 15, 1910, he agreed to purchase for £27,000, viz., £26,322 10s. and £677 10s. costs. The Commissioners were informed of the sale, and, despite the sale at this price, within a little more than a year from April 30, 1909, they served a provisional valuation on May 10, 1912, showing gross value, full site value, total value, and assessable site value, each £20,250. If these figures stood, the appellant would have to pay £945 in increment value duty, which implied an extraordinary rise in site value in one year. The area of the site was 5,000 square feet, with an exceptionally long frontage of 165 feet, partly on Trinity Square and partly on Savage Gardens, and if new buildings were erected there would be very little loss of site for the sake of light. While the appellant was the owner, various offers to purchase were made. In 1898 the property was producing a total rental of £830. An offer was made to rent the site on a building lease at a ground rent of £800. Two other offers were made, one of £20,750, and an annuity of £100 for the appellant for her life, she being then sixty-one; the other of £20,000, an annuity of £150, and the costs of the transfer. In 1900 the property was assessed to the poor rate at £701, in 1905 at £746, which was also the figure in 1909. At the time of these offers 5, Trinity Square, and 1, Muscovy Court, were liable to a rate of 2s. 6d. in the £, under the Great Tower Hill Acts, 1797 and 1869, and although the full rate had not been levied for some years, over £31 was

paid in 1907 in respect of these two properties. Since 1907 the rate had not been levied. In 1909 the property was producing a gross rent of £1,376, and a net rent, deducting rates and taxes, of £1,066, and certain parts, estimated at £193, were unlet. That had to be compared with £830 at the time of the earlier offers. In the Commissioners' opinion the property was worth as much to sell as a clean site as with the buildings on it. The Commissioners must maintain that there was a rise in value between April, 1909, and July, 1910. A difference of opinion between values was intelligible, but a difference of nearly £7,000 was impossible. Vacant possession could have been obtained very soon, as the tenancies were all short.

Richard Adam Ellis said that he acted as surveyor to the Port of London Authority in buying this property. £30,000 was the first price asked, and after negotiations the vendor accepted £27,000. He had made a valuation of the property as a building site, and advised that the property was worth that sum. Only Lord Devonport, his solicitor, and the witness, knew who was the buyer. On April 30, 1909, the property would have attracted a large number of buyers. A fair reserve price would have been £26,000, and the property ought to have produced £27,000, *i.e.*, £5 8s. per square foot. In his opinion £20,750 was quite inadequate. There was no rise in value between April, 1909, and July, 1910.

Cross-examined: The Port of London Authority had bought a good deal of property in this district, and witness had acted for them in all the purchases. This property was one of the first bought, but he would not have paid an outrageous price for it. It was he who first approached the vendor, the property not being in the market, but he did not say for whom he was buying. He was brought into the matter because he was not known to be connected with the Port of London Authority. He told Lord Devonport before the negotiations that he thought the property was worth between £25,000 and £27,000. He had made no written valuation. He first sounded the vendor with an offer of £19,000 or £20,000. In his opinion there was every chance of the property fetching £27,000 at auction in 1909. The Port of London Authority would not have been in the market as purchasers in 1909. 500 square feet were occupied by forecourts, so the actual building area worked out at £6 per square foot.

Sir David Burnett, the Lord Mayor of London, said that in 1898 he was instructed to negotiate for this property. The first offer was a ground rent of £800. No further offer was made, because the vendor would not sell for less than £30,000, though the purchaser would have gone up to an equivalent of £24,000. The fair market value on April 30, 1909, was £25,000, £5 per square foot. He thought it would have fetched that at auction. It was a very good site, with good shape and light.

Cross-examined: £5 per square foot was for the entire acre. He thought that the ground rent in 1898 would have fetched 27½-28 years' purchase. It was part of the suggested offer that the purchaser should spend £20,000 or £30,000 on building.

S. Walker said he made a survey of the site in 1898, and estimated the rental value at £1,100. He offered £20,000 and an annuity of £150, plus the costs of the negotiations and transfer. To get possession his client

would also have had to buy the tenants out. The appellant refused to sell for less than £30,000. On April 30, 1909, he considered it worth a ground rental of 4s. 6d. per square foot, equalling £1,125, which, at twenty-two years' purchase, made £24,750. He thought it could have been sold for that.

Cross-examined : If the ground rent were secured it would fetch 26-27 years' purchase. Office buildings for the tea and shipping trades would secure the ground rent of £1,125. A modern building on this site would bring in roughly a gross rent of £5,000 or £6,000. Such a building would cost £30,000. In many cases with which he had been concerned the ground rent had been as much as half the rack-rent. The property had improved in value since 1898, and was worth more as a site in 1909.

John R. Cooper said the property was more valuable as a building site than with buildings on it. The rentals showed a very considerable rise from 1898 to 1909. He valued it as on April 30, 1909, at £25,725, at about £5 a square foot, including the areas, which it was customary to include. It would have attracted a large amount of interest if up for sale.

Cross-examined . He made his survey after the case began. He took twenty-three years' purchase of 4s. 6d. per foot ground rental.

Roland Ashford Dash, for the Commissioners, said that the provisional valuation gave the highest value which they could justify. It was arrived at as follows : Net site, 4,500 square feet, with the advantages of the area which could not be built on, at £4 10s., equal to £20,250. £4 10s. was the extreme price, and was only put on because the site was exceptionally good. Without doubt the coming of the Port of London Authority had raised values, as they had shown themselves willing to give higher prices. In his experience it was not usual to take in the areas at the same rate as the rest of the site.

Cross-examined : Between April, 1909, and July, 1910, there was no rise in value except through the Port Authority coming as buyers. He thought it was worth perhaps a little less in 1909 than in 1898, but there was no material difference. The offer of £800 ground rent was probably fair ; the offer of £22,000 was a full offer. He did not think that the £800 could have been capitalised at twenty-five years' purchase. Without the area the value would have been about £500 less.

C. A. Lang said he had known the property for some years. His valuation was £20,250, viz., £4 10s. per square foot for the buildable area. He considered that a full value from his knowledge of the neighbourhood and the properties he had dealt with.

Cross-examined : He thought the property was worth less in 1909, if anything, than in 1898. The fear of the Budget had had an effect on values before 1909 ; in fact, since 1906. This fear was justified when the taxes came in. There was no other cause for a fall in value. The site was a very good one.

H. Chatfield Clarke said the property was a thoroughly good building site. He valued it at £19,500, viz., 4,500 feet at £4 4s., and 500 feet at £1 4s. That was a full value. It was contrary to his experience to take areas at the same value as the rest.

Mr. Shaw said that it was common ground that this property was worth most as a clear site, so that the buildings might be disregarded. It was remarkable that though the appellant, by her notice of objection, desired an amendment of the value of £27,000, only one witness had put that value on the property, and that tentatively, and he was bound to do it, because he had advised Lord Devonport to buy at that figure. The Commissioners had called the highest evidence, outside the Department, and the witnesses were ready to give details of transactions in the locality, but they were not asked to. As to the earlier offer, thirty years' purchase could not be obtained. Those offers and the sale in 1910 were not sales in the open market, or by a willing seller, and did not correspond with the terms of Section 25 (1). An owner who was approached while his property was not in the market asked a higher price than he otherwise would, because he must know that the purchaser was very anxious to get the property. A price which a seller squeezed out of a purchaser was not a value according to the terms of Section 25 (1).

Mr. Allen, in reply, said that the question was whether the provisional valuation represented the full market value of the land as an unencumbered site. (*Herbert v. Commissioners of Inland Revenue* [1913], A.C., per Lord Moulton, at p. 357.) It was not necessary that the property should be sold at auction. Everyone was a willing seller who sold not under compulsion of law. This was an exceptional site. None of the Commissioners' witnesses questioned Cooper's estimate of £5,000 gross rent for a modern building on the site. The difference in the valuations of the appellant's witnesses showed that there had been no collusion between them; they had not been valuing to a particular figure. The Commissioners had not called the person who signed the provisional valuation.

Awarded: That the gross value, total value, and site value is £23,690, and that the costs of the appellant incidental to this appeal be borne by the Commissioners.

For the appellant: William Allen, instructed by Nunn, Popham & Starkie, agents for B. S. Matthews, Croydon.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before H. E. MITTON, ESQ., Referee, 7th November, 1913.

LORD HATHERTON v. THE COMMISSIONERS OF INLAND REVENUE.

MINERAL RIGHTS DUTY — RENTAL VALUE OF MINERALS —
CUSTOMARY RENT — EXPENDITURE ON THE PART OF A
PROPRIETOR—FINANCE (1909-10) ACT, 1910 (10 EDW. VII,
c. 8), s. 20.

Mr. Disturnal said that the appeal was against several assessments to mineral rights duty, but for the purpose of the argument he would take the

assessment for 1909-10, which was £5,168, representing the rental value of minerals and £33 for wayleave. The assessment was upon the full royalty rent paid by the lessees, and under the proviso to Section 20 he asked the Referee to say that that rent exceeded the customary rent, and represented in part a return for expenditure on the part of the proprietor, and to substitute for it the rent customary in the district.

The colliery in question, which was worked by the Littleton Colliery Company under lease from the appellant, was situated just off the Cannock Chase Coalfield. On the west side there was supposed to be a downthrow fault, which would prevent the coal being worked, and on that side no development occurred till 1872, when a company was floated and borings were made. About £100,000 were spent in attempted development, and when the undertaking was closed down and the company was released from its lease by the appellant's predecessor. Nothing more was done till 1897, when the appellant reopened the works. He found about £50,000 worth of profitable expenditure left by the earlier lessees. After spending £19,500 the appellant joined forces with Sir Charles Holcroft, and with his assistance a further sum of £9,950 was spent in development. The only hope at that time was to form a company, and, with Holcroft's assistance, the Littleton Colliery Company was formed, and a lease was granted to them, they taking over all the works done. It was agreed that Holcroft was to have £20,000, which was actually paid, so that the appellant spent £99,450, of which the lessees had the benefit. By the lease the lessees agreed to repay £29,950, and further sums, totalling £50,450, leaving a balance of £49,000, and the royalties fixed were 3*d.* per ton to 1904 and 4*d.* per ton afterwards. The £20,900 was to be paid by the appellant to Holcroft out of the royalties.

He submitted that 4*d.* per ton exceeded the rent customary in the district, and represented a return for expenditure on the part of the proprietor. The policy of Section 20 was that the landlord should only be taxed on the bare value of the minerals, and his returns for expenditure were to be perfectly free. The expenditure need not be directly out of the appellant's pocket. Section 22 (4) illustrated how careful the Legislature had been to express this view; in that subsection the expenditure was limited to fifteen years, and the words used were "by the 'lessor' and not 'on behalf of the proprietor.'" If the expenditure moved from the side of the lessor, it came within the proviso. The appellant's predecessor was entitled to a reversion to a lease, and when the lease fell in he was entitled to everything left; he bought it and paid for it by accepting the surrender of the lease. Even agreeing that the money spent by the appellant had been repaid, "return" did not mean repayment; he must have something for his risk, and "return" must include repayment, interest, and compensation for risk. If the lessees had had to spend £99,000 in development they would have demanded a low royalty, whereas, when the rent was fixed it was reasonably certain that the expenditure had been profitable, and so the lessees were willing to pay a higher royalty. Fourpence would not be a customary rent if such expenses as these had to be borne by the lessees.

Thomas H. Bailey said his firm had acted for appellant's mining

properties for more than fifty years. On November 11, 1872, appellant's father leased 1,038 acres to W. and F. W. North ; in 1874 there was a sublease to a colliery company. This was the first attempt to prove coal to the west of the fault. The company expended in all £97,283, and in 1885 threw it up, and asked Lord Hatherton to allow a surrender of the lease on payment of £100. Water practically put an end to the operations. Two shafts had been sunk, about 160 yards each, lined with cast iron ; a tramway and six bridges were built, and there were brickworks and buildings. His firm estimated the profitable expenditure at £50,000. In 1897 appellant decided to unwater No. 2 shaft, and sink it further ; from April, 1897, to October, 1898, appellant spent £19,500 ; this expenditure proved the top of the coal measures, and that the Cannock Chase seams existed there. In 1898 appellant associated himself with Holcroft, who practically took over the management, and up to July, 1899, £9,950 was spent. Holcroft was to be paid £20,000. At the time of the lease in 1899 it was certain that the coal could be worked successfully. It would have been impossible to get 4*d.* per ton if the lessees had had to run the risk of sinking shafts and making expenditure. Appellant might possibly have got 3*d.* per ton, but he doubted it ; the figure always discussed was 2*d.* Witness gave details of the rents at other collieries, the names of which were not disclosed, and said that the average of eighteen properties with which he had to do was about 2·9*d.*

Cross-examined : He knew the expenditure of the earlier company from their balance-sheet. There were three shafts in the history of this colliery : No. 1 was used for pumping water, No. 2 was developed by appellant, and No. 3 by the Company. For sixteen years 1 and 2 had lain full of water. Rents beyond the boundary faults were a good deal less than inside. In May, 1908, a lease of adjoining minerals was granted at 4*d.* per ton for seams above 4 feet, and in addition there was a wayleave rent of 1*d.*

Re-examined : The reservation of a barrier in this lease raised the rent. Pumping was absolutely necessary for this mine.

Mr. Kingdon drew attention to the language of the notice of appeal ; the appeal was against a " refusal to make an allowance for payments " made under an agreement dated October 12, 1898, " namely, a payment of £2,450 by the appellant to Holcroft. It by no means followed that if the Commissioners substituted another rent, the rent so substituted would correspond to a subtraction of £2,450. No evidence as to rents had been laid before the Commissioners, and there had been no request to them to substitute a figure. By Section 20 (2) the duty was to be levied on " the " amount of rent *paid* " ; it was a conventional rental value, and was conclusive. What the appellant did with the money after it was paid to him was immaterial, and the amount paid to him was not disputed. The earlier expenditure was expenditure by a sublessee as a lessee. Section 24 defined " proprietor " in terms which excluded a lessee, so this could not be expenditure by a proprietor. The earlier lessees had paid £100 to get rid of their work, and then, after being left for sixteen years, it was valued by the appellant at £50,000. The appellant had spent £29,000 odd, and the lessees had agreed to repay, and had repaid, every cent which

he had spent, with the addition of a premium of £21,000. The £20,000 to be repaid to Holcroft was remuneration for money accommodation, management, and promotion, and it was childish to say that it was expenditure which would ordinarily be borne by the lessee. Section 22 (4) had nothing to do with this case; it dealt with increment value duty. Mineral rights duty was levied on the rent paid during the working year. Section 22 (4) clearly contemplated a case where the rental value had not already been reduced. None of the preliminary steps under the proviso to Section 20 had been taken; it had not been shown to the Commissioners that this was a special case. Most of the collieries referred to by Bailey were far off and of inferior coal, whereas coal similar in quality had to be considered. It could not be said that the rent represented a return for expenditure which had already been returned.

T. A. O'Donoghue, divisional mineral valuer, considered 4*d.* a reasonable rent, and below the average. In his opinion the customary rent in the district exceeded 4*d.* per ton.

Cross-examined: Before becoming a Government valuer he had no experience of Cannock Chase Collieries. The customary rent for the best seams would be 6*d.*, and for the inferior 3*d.* The average on Cannock Chase at present was 4½*d.*, based on fourteen of the principal collieries. In almost all the cases the expenditure was made by the lessees. He thought the company would have paid the same rent if they had had to expend the money.

Alexander Smith said that in the earlier days of this coalfield the average rent was over 6*d.*; now it was over 5*d.* The landlord was bound to spend something to work this property up to the customary rent and to attract a customer, as the place before had a bad name owing to the mistakes which had been made. To rate that bad name at £50,000 was absurd. He thought that 4*d.* was below the customary rent.

Cross-examined: He had taken seven collieries to found his averages of 6*d.* and 5*d.* He did not agree that this colliery was over the western boundary fault: the position of the fault was still a matter of opinion.

Mr. Kingdon said that the question was the rent customary in the district, and there was no evidence that this rent exceeded it. They had to consider the quality of the coal and the rent paid for it. In this case there was no question of the shifting of the pecuniary burden, as the lessee repaid all expenditure, and the lessor got £21,000 extra.

Mr. Disturnal, in reply, asked the Referee to reduce the assessment on the application of the proviso to Section 20. What the appellant did converted a *damnosa hereditas* into a reasonably certain proposition. The £100,000 was an expenditure on behalf of the proprietor. It made no difference that the £29,000 was repaid; the expenditure made had given the venture a fair certainty of profit. The payment to Holcroft was a fee for his services in forming the Company, for his advice, and for financing the appellant, and a company would pay a bigger royalty if all the expenses of promotion had been paid by the lessor. The way of discharging the obligation was immaterial; if the appellant had paid Holcroft in cash on the signing of the lease, it would clearly have been an

expenditure on the part of the appellant. He submitted that the customary rent was something less than 3*d.*

Award : This is an appeal by the Right Hon. Baron Hatherton against an assessment made by the Commissioners of Inland Revenue for mineral rights duty under Section 20, Finance (1909-10) Act, 1910. The grounds of appeal were : The refusal of the Commissioners to make an allowance in respect of (1) income tax, (2) management expenses, and (3) in respect of an agreement dated October 12, 1898.

- (1) The Commissioners admitted before me that the appellant was entitled to a deduction for income tax.
- (2) The appellant withdrew his claim to a deduction for management expenses.
- (3) The appellant submitted that a special case had been shown to the Commissioners within the meaning of the proviso contained in Section 20 of the Finance (1909-10) Act, 1910.

After hearing the arguments from both parties and the evidence submitted, I find :—

- (1) The appellant is entitled to a deduction for income tax.
- (2) The appellant is not entitled to a deduction for management expenses.
- (3) The appellant did not show a special case to exist within the meaning of Section 20 of the Finance (1909-10) Act, 1910, and is therefore not entitled to an allowance in respect of the agreement dated October 12, 1898.

For the appellant : Disturnal, K.C., and F. J. Wrottesley, instructed by Taylor, Rowley, Lewis & Davis, agents for Hand & Co., Stafford.

For the respondents : F. W. W. Kingdon, Assistant Solicitor to the Inland Revenue.

Before GEO. BENNETT MITCHELL, ESQ., *Referee*, 12th November, 1913.

COUNTESS OF SEAFIELD'S TRUSTEES v. THE COMMISSIONERS OF
INLAND REVENUE.

PROVISIONAL VALUATION—DEDUCTIONS—TOTAL VALUE—FIXED
CHARGE—WHETHER TACK-DUTY A FIXED CHARGE—ASSESS-
ABLE SITE VALUE—COST OF CLEARING SITE—FINANCE
(1909-10) ACT, 1910 (10 EDW. VII., c. 8), ss. 25 (3) (4) (E)
& 41.

In an appeal against the provisional valuation of land leased for 100 years from Whitsunday, 1905, at an annual tack-duty or ground rent of 3*0s.* . *Held*, (1) that the tack-duty was not a fixed charge as defined

by Section 41 of the Finance (1909-10) Act, 1910, and did not therefore form a deduction from gross value to arrive at total value, and (2) that in the circumstances it was not necessary to divest the land for the purpose of realising its full site value.

This appeal related to the provisional valuation of a cottage and ground at Nethy Bridge, Inverness-shire.

The ground, which extended to 58 poles, was held under a lease for 100 years from Whitsunday, 1905, granted by the late Countess of Seafield to Thomas Macdonald. The annual tack-duty or ground rent was 30s. The lease conferred a right of pre-emption on the lessor in the event of the lessee disposing of his interest, and contained usual restrictions on the use of the land for preserving the amenity of the district. The leasehold subjects were sold in 1910 at the price of £425.

In the provisional valuation original gross value and original total value were each stated at £455, and original full site value and original assessable site value were each stated at £58.

It was proved or admitted that the feuing value of similar ground, with similar restrictions, in the same road was 1s. per pole, or £8 per acre. The site value of 58 poles, capitalised at 20 years' purchase, was thus brought out at £58.

The appellants, who were the lessors, and as such entitled to the reversion expectant on the determination of the lease, appealed, and maintained (a) that the total value was excessive, in respect that under Section 25 (3) the tack-duty was a "fixed charge," and an allowance therefor should be deducted from gross value to arrive at total value, or alternatively the capitalised value of the tack-duty was the amount by which the gross value would be diminished if the land were sold subject to all the provisions of the lease, which was a "covenant or agreement" "restricting the use of the land entered into or made before the 30th day of April, 1909"; (b) that the site value was excessive, in respect that a deduction should be made for the cost of clearing the site under Section 25 (4) (e), the fact that the price realised on the sale in 1910 was less than the total value in the provisional valuation, establishing the necessity for divestiture; and (c) that the valuation did not represent the appellants' interest in the land. [This argument was not pressed.]

The respondents maintained (a) that the tack-duty, not being perpetual, could not be considered a "fixed charge" as defined in Section 41, and that the obligation to pay tack-duty could not be regarded as a "covenant or agreement restricting the use of the land," (b) that the divesting of the ground could only be allowed when, in the opinion of the Commissioners, it would be necessary to divest the land for the purpose of realising full site value, which in this case it was not, and (c) that the fee simple of land only was to be valued, and by Section 41 fee simple meant "the fee simple in possession not subject to any lease."

The Referee adhered to the figures in the provisional valuation, and added the following note to his award :—

"The ground rent is not, in my opinion, a fixed charge as defined in Section 41 of the Act. It is not disputed that the feuing value of similar ground, with similar restrictions, in the same road is £8 per acre. This figure the Commissioners have correctly taken in arriving at original full site value. It is not necessary, in this case, to divest the land for the purpose of realising full site value."

For the appellants : Mackenzie, Innes & Logan, W.S., Edinburgh.

For the respondents : H. Watson, of the Solicitor's Department, Inland Revenue.

Before HOWARD MARTIN, ESQ., Referee, 14th November, 1913.

MAJOR LANGLANDS v. THE COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—LAND USED FOR BUSINESS, TRADE, OR INDUSTRY—STUD FARM—VETERINARY SURGEON—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 16 (2).

At the commencement of the hearing the appellant obtained the Referee's permission to amend the notice of appeal, so that the ground of appeal read "on the ground that the premises are now used as paddocks "in connection with the *bona-fide* business of a veterinary surgeon," the original ground of appeal being that the premises were used as a stud farm.

Mr. Langlands said that the appeal was against an assessment to undeveloped land duty for six months ending April 30, 1913. The property in question, Coxedge Farm, Epsom, comprised five grass paddocks of an area of 19a. 2r. 3lp. It had been let to one Miller, and after his death to his sons, who used it in connection with their business as dairymen. From April 30, 1909, to Michaelmas, 1912, undeveloped land duty had been paid with the exception of five months, from April 30 to September 29, 1912, as to which he admitted liability. Prior to March, 1912, Mr. John Coleman had negotiated with a view to renting the paddocks in connection with his veterinary business in Church Street, Epsom, as he needed a suitable place in which to turn out horses sent to him for treatment. The land was let to him from Michaelmas, 1912, at £108 10s., the tenant repairing and paying the rates. The paddocks and buildings were now used solely in connection with the veterinary business. There were fifteen loose boxes, a tack-room, and a boiling house, a straw-yard, granary, and one or two open sheds. They would not be of any value to Coleman except for his business. A portable shoeing forge and a supply of horse medicines were kept on the premises. Even if the premises were used as a stud farm, such a stud was not an agricultural stud.

John Coleman, M.R.C.V.S., said he had been in Epsom for many years. Owing to want of room he found it necessary to acquire paddocks. He used the property as a kind of convalescent home for horses, and as a jumping and exercising ground. He obtained permission to cut through the fences in order to make a steeplechase ground for exercise. He had altered all the cowsheds and made boxes of them, and had changed the property from a dairy farm to suit his business.

Cross-examined : He occasionally bought and sold horses, but did not profess to deal in them. All the mares on the farm, except one brood mare of his own, were there for treatment. During two or three months of the year the greater proportion of animals at the farm might be brood mares. The fields were used for pasturing the horses and for jumping.

By the Referee : If mares were sent there to foal it involved treatment during foaling ; thoroughbred mares were sometimes a lot of trouble.

Mr. Shaw said that the case now presented was very different from the case outlined in the notice of appeal, but, in view of Section 16 (2), and the definition of "agriculture" in Section 41, he submitted that if this land was used for meadow or pasture land it was used for the business of agriculture, and the fact that the owner who so used it had another business was not material. The subsidiary nature of the pasturing was a question of degree. He suggested that training and schooling horses was not part of a veterinary surgeon's business. In so far as the appellant relied for exemption on the allegation that this was a stud farm, he submitted that that was a business of agriculture, a stud farm being a farm for breeding.

Award : The notice of appeal having been amended to read as follows : "That the land in question is now used as paddocks in connection with the *bona fide* business of a veterinary surgeon," the decision on the appeal . . . is as follows :—

That the property is exempt from the payment of undeveloped land duty.

For the appellant : W. Langlands.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before JOHN FARRER, ESQ., *Referee*, 19th November, 1913.

MRS. JERVIS *v.* THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—SITE VALUE—PERSON AGGRIEVED—
FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), ss. 25 & 33 (1).

This was an appeal against the site value fixed by the Commissioners on a piece of land on which were eight cottages. The land adjoined the

North Eastern Railway line at Goole, and the ground of appeal was that the deductions were excessive and that the site value was insufficient. The provisional valuation was served on January 9, 1912, and showed total value £430, full site value £37. Objection was taken to the full site value, and on March 7, 1912, an amended provisional valuation was served, in which the site value was put at £75. Against this figure the appellant appealed.

At the commencement of the hearing Mr. Shaw said that he wished first to raise a point of law. The appeal was under Section 33 (1) against the provisional valuation. The appellant must be a person aggrieved. The provisional valuation was served on January 9, 1912; notice of objection was received on behalf of Mrs. Jervis, who had bought the property on March 27, 1911, from the executors of T. Nothard. Subsequently notice of appeal was given on behalf of Mrs. Jervis, dated April 16, 1912. By that notice the appellant appealed, not against the gross or total value, but against the site value, on the ground that the difference was too great. She was objecting to the provisional valuation as at April 30, 1909, before she had any interest in the property. The sale to the appellant was at the same figure (£430) as that set out in the provisional valuation. Under these circumstances, he submitted that the appellant was not a person aggrieved.

Mr. Burniston said that the Act provided for an appeal by a person aggrieved. There must be someone aggrieved by the provisional valuation. The valuation was not made till January 9, 1912. Who could be aggrieved then? Not the executors of Nothard, the vendors, because their functions had ceased. The beneficiaries under the will were mostly in South Africa, so that the only person who could be affected was the appellant. If nobody was affected the section was useless. If the appellant was not affected, why was the provisional valuation served on her, and not only the first provisional valuation, but also the amended one?

Mr. Shaw, in reply, said that the valuations were also served on the executors, who would have been the persons aggrieved if the valuation was wrong, as they would have had to pay increment value duty, if any, on the occasion of the sale to Mrs. Jervis. If an occasion arose hereafter, Mrs. Jervis could object to the occasional valuation. He asked the Referee to give a decision on the point, but at the same time, was willing to go into the merits of the case.

The following evidence as to value was called.

On behalf of the appellant—

William Dawson said the site was extremely valuable, with direct access into the North Eastern Railway goods yard. It was only owing to the shortage of cottages that the present ones were allowed to stand. He estimated the site value at £206 4s. It was an unique position for a small factory or warehouse.

William Gorbett said he sold the property in 1911. The reserve value was £500. He estimated the site value at £175.

Cross-examined: Apart from the value given by proximity to the North Eastern Railway, he would put the site value at £105.

David Milne said the area was 498·5 square yards ; his estimate of the site value was £206. It was a bad situation for cottage property.

Cross-examined : The value of the property, based on the net rent, he estimated at £224.

G. Burniston said that £31 3s. 9d. had been spent in repairs since purchase, and the appellant had paid for repairs of the road.

For the respondents—

C. H. Gott, superintending valuer for the West Riding, said the area set out in the provisional valuation was 377 square yards. They always excluded the half streets, and only recorded the net building area. The value put down represented the value of the property put down with whatever appurtenances it possessed. It was not a statutory necessity to set out the area. The provisional valuation worked out at about 4s. a square yard on the net area, or 3s. a square yard on the gross area. He could find nothing in Goole to substantiate 8s. a square yard.

Cross-examined : He had not seen the property when he advised the service of the amended valuation. He thought it was in his mind that the actual area of the road did not belong to the appellant, except as to a right of way.

H. B. Thorpe, district valuer, said that £75 was a full value ; if anything, excessive.

J. W. Bentley estimated the site value at 3s. a square yard.

Award : The gross value was agreed at £430. I find that the assessable site value of the property on April 30, 1909, amounted to £100. Difference between gross value and value of the fee simple of the land divested of buildings, &c., £330.

For the appellant : J. Burniston (Hind, Son & Burniston, Goole).

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before THOMAS BINNIE, ESQ., *Referee*, 11th December, 1913.

ELLEN TOYE & MRS A. CASSIDY *v.* THE COMMISSIONERS OF
INLAND REVENUE.

INCREMENT VALUE DUTY—TRANSFER ON SALE—FAILURE TO CLAIM
SUBSTITUTED SITE VALUE—FINANCE (1909-10) ACT, 1910—
(10 EDW. VII., c. 8), ss. 1 & 2 (3).

This appeal had reference to a property, No. 20, Burn Road, Parkhead, Glasgow. A provisional valuation was served on the appellants on March 12, 1913, to which no objection was taken by them. In the

provisional valuation the total value was placed at £478, and the assessable site value at £478. The property was conveyed on April 3, 1912, to William Beardmore & Co., Ltd., whose works adjoined the property, for £1,200. The Commissioners claimed increment value duty amounting to £134. On October 27, 1913, the appellants gave notice of appeal against the assessment of duty on the following grounds :—

“ The increment value on which duty is claimed is overstated in said notice of assessment, as we do not admit said value was £722, as stated in the statement annexed thereto. We consider that the price ought not to be treated as entirely applicable to the site of said property. Out of the price got for the property, being £1,200, there had to be paid off the amount of a mortgage for £1,000 affecting it, arrears of interest thereon, and other claims in connection with the sale of the property, which practically swallowed up the whole price. We consider that under these circumstances no increment value duty is payable, and, even assuming that such duty is payable, which we do not admit, we consider it is a case in which any claim therefor ought not to be pressed by the Commissioners of Inland Revenue. In any case neither of us is in a position to meet it.”

The Referee gave his decision on December 18, 1913, as follows :—

The decision on the appeal in respect of which the annexed notice of appeal has been given is as follows :—

Having heard parties on the appeal, and having inspected the site of the property in Burn Road, formerly belonging to the appellants, I find—

- (1) That at April 30, 1909, and until April 3, 1912, the appellants were proprietors of the property, No. 20 Burn Road.
- (2) That the provisional valuation of the said property under the Act above cited made as at April 30, 1909, was duly served upon the appellants on March 12, 1913, the values therein, so far as material to this appeal, being as follows :—

| | £ |
|---------------------------------------|-----|
| Original total value | 478 |
| Original assessable site value | 478 |

- (3) That no objection was taken to the provisional valuation, and accordingly it has become finally settled.
- (4) That at April 30, 1909, the property in Burn Road, and another in Glasgow also belonging to the appellants, were together burdened with a bond for the sum of £1,000.
- (5) That no application was made by the appellants for a substituted site value under Section 2 (3) of the Act above cited within three months of the provisional valuation becoming finally settled.
- (6) That by disposition dated April 3, 1912, the appellants conveyed the property, No. 20, Burn Road, to William Beardmore & Co., Ltd., the consideration for the transfer being £1,200.

(7) That by notice of assessment dated July 7, 1913, the Commissioners of Inland Revenue assessed the appellants to increment value duty on the occasion of the transfer on sale of the said property to Messrs. Beardmore in the sum of £134.

(8) That by the notice of the appeal above mentioned the appellants have appealed against the above assessment.

I am of opinion that the appellants have failed to state any relevant grounds for their appeal. I decide that the appellants have been properly assessed to increment value duty on the occasion of the said transfer on sale, and that the amount of the increment value duty payable by them on the said occasion has been correctly stated at £134.

I find the Commissioners of Inland Revenue entitled to their expenses in this appeal, allow them to lodge an account thereof with the auditor of the Court of Session, and remit the same to the said auditor for taxation and report. I would, however, hope that, in the circumstances under-mentioned, the Commissioners will not insist upon expenses against the appellants.

While I have felt it my duty to decide the appeal against the appellants, I am convinced that their failure to apply for a substituted site value (as they ought, in their own interest, to have done) was due to their acting without legal or expert advice, and to their absolute inability to understand the provisions of the Act in question. In all the circumstances I venture to commend to the favourable consideration of the Commissioners any application for such a substituted site value which may even yet be made by the appellants.

Quoad ultra, I continue the appeal.

For the Commissioners of Inland Revenue; Alexander Blair, F.S.I.,
Chief Valuer for Scotland.

Before JOHN LOPDELL, ESQ., Referee, 15th December, 1913.

JAMES RYAN *v.* COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—LANDS BOUGHT OUT UNDER LAND
PURCHASE ACTS—RESTRICTIONS BY STATUTE—SITE VALUE—
OBJECTION TO APPEAL AGAINST ASSESSMENT OF DUTY—
FINANCE (1909-10) ACT, 1910, s. 33 (1) (B).

Subsection 1 (b) of Section 33 enacts that “the original total value and
“the original site value, and the site value as ascertained under any

“subsequent valuation, shall be questioned only by means of an appeal
 “against the determination by the Commissioners of that value where
 “there is an appeal under this Act, and shall not be questioned in any case
 “on an appeal against an assessment of duty.”

This was an appeal against the assessment of undeveloped land duty on the grounds that the lands were purely agricultural lands and that the lands being vested under the provisions of the Land Purchase (Ireland) Acts, they were subject to an annuity in favour of the Irish Land Commission for a residue of $66\frac{1}{2}$ years, and, that being so, there was a specific restriction against using the lands for building purposes under Section 54 (1) of the Irish Land Act, 1903, the consent of the Irish Land Commission must be obtained before assigning or subletting any portion of the said land. That being so, the site value did not exceed its agricultural value.

Mr. E. Coll, instructed by Mr. Richard Martin, called the Referee's attention to Section 33 (1) (*b*) *supra*.

The Referee's decision was as follows :—

Having regard to the particulars of the grounds of appeal as presented to me at the hearing, and to the admitted fact that the provisional valuation was not objected to, I decide the lands in question are liable for undeveloped land duty. I make no order as to costs.

Before THOMAS JONES, ESQ., *Referee*, January 16th, 1914.

W. H. C. LLEWELLYN *v.* THE COMMISSIONERS OF INLAND
 REVENUE.

MINERAL RIGHTS DUTY—DEATH OF PROPRIETOR BEFORE PASSING
 OF FINANCE (1909-10) ACT, 1910 — INCIDENCE OF DUTY —
 FINANCE (1909-10) ACT, 1910 (10 EDW. VII., C. 8), SS. 20 & 24.

Mr. Allen said that there were two appeals against two assessments to mineral rights duty, one for the year from April 1, 1909, to March 31, 1910, the other for the year from April 1, 1910, to March 31, 1911. The case was complicated by the fact that the owner of the royalties, R. W. Llewellyn, the father of the appellant, died on February 10, 1910, before the passing of the Finance Act, 1910. The usual rule of law, that a statute spoke from the date when it became law, was however contradicted by express words in the Finance Act which made the Act take effect from an earlier date. In the first appeal the charge of duty was for the financial year commencing April 1, 1909, and the last working year would be October 1, 1908—September 30, 1909; in the second appeal the last working year would be October 1, 1909—September 30, 1910. The duty

payable for the financial year 1909-10 became due on January 2, 1910. If the Act had been in force then the late R. W. Llewellyn would undoubtedly have been liable for the duty, as he had received the rents and profits from the mines; but it was a different thing to claim that the tax could be levied on some other person who had never received and never would receive the royalties. R. W. Llewellyn had received the money before the passing of the Act, and naturally did not make provision for the payment of a duty then non-existent. The Commissioners had undertaken not to assess the executors of R. W. Llewellyn, but afterwards did so, for the assessments for the financial year 1909-10 professed to be on "W. H. C. Llewellyn for the executors," with the exception of one which professed to be on W. H. C. Llewellyn personally. Those assessments on the executors ought to be withdrawn. With regard to the one assessment (Ogmore 33) served on W. H. C. Llewellyn personally, no claim was made by the Commissioners for duty up to the date of R. W. Llewellyn's death; the assessment was on 49-365ths (from February 10 to March 31, 1910) of the amount of rent received by R. W. Llewellyn for the working year October 1, 1908—September 30, 1909. Such an assessment was absolutely invalid and unauthorised by the Act. For the financial year 1910-11 the appellant was assessed on £24,700, whereas he had beneficially received only £4,562, so that he would have to pay (at 1s. in the £) 20,138 shillings in duty on money which he had never received, and never would receive.

As to the first assessments for the financial year 1909-10, he submitted that all of them, except Ogmore 33, had been served on the wrong person, and ought to be withdrawn. As to Ogmore 33, that was served on the appellant, and taxed him on 49-365ths of the whole duty payable on rents received October, 1908—September, 1909. That duty became payable on January 2, 1910, by W. R. Llewellyn. If the tax was leviable on anyone, it should have been on the executors; but the executors had distributed the estate before the Act passed. In these peculiar circumstances it appeared that there was no liability for the year 1909-10. Duty was payable by the lessor on the benefit received by him from October—September previous to the year of assessment, and there was no power in the Act to split up the duty between various parties who owned the land for different parts of the year.

As to the assessments for 1910-11, a man could not be taxed on what he had not received. (*Duke of Beaufort v. Commissioners of Inland Revenue* [1913], 3 K. B., at p. 55.) The appellant had only received £4,562, and had no interest in the rest of the money paid by the lessees.

Mr. Shaw said that the Commissioners had not pressed their claims as far as they might have done. By Section 20 (2) (a) the basis of the charge was the amount paid by the working lessee, and not the receipts by the lessor. In this case there was a working lessee, and the duty was therefore, by Section 20 (4), recoverable from the immediate lessor of the working lessee. Applying the section to this case: (1) as to the 1909-10 assessments, the last working year for that financial year was October, 1908—September, 1909. It was true that then R. W. Llewellyn was the immediate lessor and the person to whom the rents were paid, but he could not be assessed, because the Act was not passed till after his death.

After the passing of the Act, mineral rights duty was payable by someone in respect of the financial year 1909-10, namely, by the immediate lessor, who at the time when the assessments were made was W. H. C. Llewellyn. Yet the Commissioners had restricted their assessments to the time when he was the immediate lessor. The assessments could not be made till the Act was passed. As to the service of the assessments, he was not prepared to uphold the actual wording of the address, but the correspondence showed that the appellant was assessed personally, and that there was no possibility of misunderstanding.

(2) As regarded the year 1910-11, the appellant admitted that he was liable to pay some duty, but claimed that he was only liable on the money he had received beneficially. But what had to be found was the rental value, and that was not disputed to be £20,462. It was on the rental value that the appellant, who throughout the financial year was the immediate lessor, had to be assessed.

Awarded:—

- (1) That as no returns are available for the last working year, 1908-9, as defined by the Finance Act, 1909-10, the appellant is properly assessable at 49-365ths of the revenue for the working year 1909-10, being £2,747, less such a sum as may be payable for income tax, thereon.
- (2) That the assessment notices served upon the appellant in respect of 49-365ths of the financial year 1909-10 should be withdrawn, and amended notices served upon him on the basis of £2,747 rental value.
- (3) That under Section 20 (2) (a) of the Finance Act the appellant is properly assessed for the financial year 1910-11 upon the basis of the total amounts received for the working year 1909-10 as returned by him at £20,462 11s. 4d., less whatever sum has been paid thereon for income tax, and that the assessment notices are subject to correction only for the latter deduction.

For the appellant: William Allen, instructed by S. H. Miller, Vardon & Miller.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before HOWARD MARTIN, ESQ., *Referee*, 20th January, 1914.

E. A. STEVENS AND ANOTHER *v.* THE COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—LAND LET FOR CRICKET PITCHES AND TENNIS COURTS—LAND USED FOR BUSINESS, TRADE, OR INDUSTRY—FINANCE (1909-10) ACT, 1910, s. 16.

Mr. Allen said that the appeals were against assessments to undeveloped land duty for successive years on property at Honor Oak. The assessable site value was fixed at £2,330, and the duty claimed was £4 17s. 1d. in each year. The area assessed, 1a. 3r. 14p. in extent, was let together with other lands to Mr. Anderson by lease of October 28, 1910, for five years with a proviso for resumption if the lessor wished to erect buildings or to sell. Prior to that lease there had been another identical in terms. When Anderson took the land it was all under plough; he levelled and drained it, laid on water, made cricket pitches and tennis courts, and built pavilions on it, and the effect of his work was to make it a thoroughly up to date athletic ground. The various pitches and courts were let by him to different clubs. It was admitted that the ground was worth more than £50 per acre. Under Section 17 (3) (*d*), the Commissioners had exempted all the land except the particular piece, the subject of the appeal, and they would have exempted that, if the appellants had undertaken not to put into force the proviso in the lease. He admitted that the appellants had no right of appeal against the decision of the Commissioners under that subsection, but they had a right of appeal under Section 16 (2), on the ground that the land was used *bonâ-fide* for a business, trade, or industry other than agriculture. The framers of the statute had intentionally used the widest possible words, in order to exempt any one who used his land for profitable purposes, excluding agricultural purposes, and in *Duke of Devonshire v. Commissioners of Inland Revenue* the section had been read in the widest possible way. He submitted (1) that the user of the ground by Anderson brought it within the words of Section 16 (2); (2) that the land necessary for the use of the pavilions as pavilions was developed land. One of the pavilions was actually on the ground which the Commissioners charged with duty. The business in question was that of an athletic ground provider. It was immaterial whether the land was being used reasonably or at a profit, but, in fact, Anderson had spent a great deal on the land, and was at present using it at a profit. The land was laid out before the duties were imposed, work having begun nearly twenty years ago. The Act did not imply the necessity of buildings to make land developed.

William Berthom produced and proved photographs of the land.

Henry Anderson gave evidence bearing out counsel's statement as to the work done by him and the use of the land. Water was laid on to each pitch and court. He had spent about £700 on the land generally.

Cross-examined: His business was that of a leather merchant in

Bermondsey ; he went there for a part of every day. Each club had exclusive use of the pitch let to it for the season. He had written agreements with the clubs in every case, but had not brought an agreement with him. The land was let for the cricket season, May 1—September 30. He had sometimes let it in winter for football, but not during the last few years.

Gilbert Dunsmore, surveyor, gave evidence as to the area of the land in question.

Mr. Shaw said that the only point was whether the land was *bonâ fide* used for a business, trade, or industry. The further point that the pavilion might exempt a certain portion really stood or fell by the first point, for a pavilion was not a dwelling-house nor was it a building for the purpose of a business, trade, or industry ; it was a building for the purpose of a game. From May 1—September 30 the land was used by a cricket club for its games. The question was the use of the land, and Anderson was not using it. One could not have two uses of the land at the same time. If there was actually a letting to a club, which had the right to exclusive possession, Anderson could not be said to use the land. Even if there were only a licence, the use of the land was for playing a game. If there were two uses, one must look at the substantial use. If the appellant's contention was right, there was very little use in Section 17 (3) (d).

Mr. Allen, in reply, said that at any rate from September 30—May 1 Anderson used the land exclusively for the purpose of keeping it up as an athletic ground, and must be using it for his business. Two people might be in occupation of land at the same time. Letting this ground was like letting a seat in a theatre. In the case of a public-house there was a simultaneous user of the premises by the publican for his business and by the customer for his pleasure. This land was essential to Anderson's business.

Awarded : That the land in question is used *bonâ fide* for a business trade or industry other than agriculture, and is therefore exempt from undeveloped land duty, and that any expenses incurred by the appellants shall be paid by the Commissioners.

For the appellants : William Allen, instructed by Charles Stevens & Drayton.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before J. D. WALLIS, ESQ., Referee, January 22nd, 1914.

FLETCHER MOORE v. THE COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—FINANCE (1909-10) ACT, 1910
(10 EDW. VII., c. 8), ss. 16 & 17.

This was an appeal against an assessment to undeveloped land duty on land at Trees Lane, Denton. The appellant wrote to the Referee, saying that he was indisposed and could not attend the appeal. The contentions put forward by the appellant in a letter to the Referee were that the land, 8½ acres in extent, was fully developed. In all he possessed 13 acres at Trees Lane, including a road. Nine cottages had been built; two plots were let for poultry runs and three or four as vegetable gardens, while a field was let to a farmer for grazing in the summer, and he sublet it to a football club. It was supposed that that portion of the land overlay a worked-out coalpit and therefore it was not suitable for building purposes. For twenty years he had been trying to sell the land or let it permanently, but without success. He objected to a site value of £88 an acre for the 8½ acres; the annual letting value was £2 an acre.

Mr. Shaw said that in the first place the appellant's agent objected to the provisional valuation, which was amended in accordance with the figures desired. As that had not been objected to it had become fixed. For the year 1909-10 there was no assessment to duty because there was a tenancy in existence. For 1910-11 duty was charged from September 25 to March 31, as the tenancy was terminable on six months' notice. The assessment was made on assessable site value, £793, less agricultural value, £270, and £391 in respect of the tenancy, making £132, and duty thereon was 5s. 6d. For 1911-12 and 1912-13, duty was charged on £793 less £270, and the duty was £1 1s. 9d. for each year. In correspondence with the Inland Revenue the appellant contended that the land was exempt because it was used for agriculture. His attention was drawn to the definition of agriculture. On April 18, 1913, he wrote saying that by the Act 5 acres were exempted by a house, and therefore his nine cottages would exempt 45 acres; but it was pointed out to him that the exemption in Section 17 (4) did not apply in this case, and that proper allowances had been made. In reply the appellant argued that Section 16 (2) exempted agricultural land, and further that under Section 7 agricultural land was exempted, while the land had no higher value than its market value for agricultural purposes.

The agricultural value of the land in question was £270, and that was deducted from the site value to ascertain the amount on which to charge the duty. Section 7 only referred to increment value duty. The appellant did not contend that the land had been developed by the erection of buildings for the purpose of any business trade or industry other than agriculture. The land on which the cottages stood had nothing to do with the assessment. The fact that some of the land was unsuitable for building purposes was taken into consideration when the provisional

valuation was prepared. It affected the value of the land, but did not do away with the liability to duty. The tenant sublet the football ground on a yearly tenancy, and it was evident that Section 17 (3) (d) did not apply; the Commissioners had come to the conclusion that other circumstances did not render it probable that the land would continue to be used as a football ground. That was an opinion against which no appeal lay.

Award: The appellant on August 26, 1912, gave notice of objection to the total value, site value, and agricultural value in the provisional valuation, stating the amendments he desired, which amendments were accepted by the Commissioners, and an amended provisional valuation was prepared on September 5, 1912. The amended provisional valuation cannot now be questioned. The land is undeveloped land, and the appellant is liable to pay undeveloped land duty from December 25, 1910, as demanded. The appellant to pay the expenses incurred by the Commissioners.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

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Certain of the Decisions of Referees, &c., reported or referred to in this issue are or may be under Appeal. The results of such Appeals will be reported or referred to in forthcoming issues of these Reports, but in the meantime the possibility of such decisions being reversed on Appeal should be borne in mind.

LAW CASES.

[KING'S BENCH DIVISION.]

COMMISSIONERS OF INLAND REVENUE v. EARL OF DERBY.

[JULY 28TH, 29TH, AND 31ST, 1913.]

Revenue—Reversion Duty—“Determination” of Lease—Currency of Lease—Agreement for New Lease on Conditions—Non-Performance of Conditions—Operation of Agreement as a Surrender and “Determination” of old Lease—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 13 (1).

By Section 13 (1) of the Finance (1909-10) Act, 1910, which came into operation on April 29, 1910, reversion duty is made payable “on the determination of any lease of land.”

In 1886 the respondent's predecessor in title granted a lease of a piece of land for seventy-five years from March 25, 1883. While this lease was current the tenant in possession applied in February, 1910, for the terms on which a lease for 999 years would be granted to him, and on March 18 the respondent's agent communicated the conditions on which the proposed new lease would be granted. These included the payment of a fine and a certain rent payable as from March 25, 1910, the making out of a good title, and the payment of all rent under the existing lease to the commencement of the new lease. On April 5, 1910, the terms were finally agreed upon and a definite agreement made. At that time the tenant, who was in possession, had not performed the above conditions, and these were not performed until June, 1910, when the new lease was granted. The question being whether there was a “determination” of the old lease on April 5, 1910, or at any time before April 29, 1910, when the Finance Act came into operation:—

Held, that as the conditions on which the new lease was to be granted had not been performed by the proposed lessee until after the Finance Act had come into operation, the agreement for the lease could not before the passing of the Act be treated as the lease; that therefore there was not until after the passing of the Act a new lease which operated as a surrender by operation of law of the old lease and caused a “determination” thereof, and that reversion duty was payable.—(109 L. T., 827.)

[KING'S BENCH DIVISION.]

SHAWE STOREY v. COMMISSIONERS OF INLAND
REVENUE.

[OCTOBER 27TH, 1913.]

*Revenue—Mineral Rights Duty—Mineral Wayleave—Assessment—
Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 20 & 24.*

By Section 20 of the Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), it is provided that there shall be charged, levied, and paid an annual duty, called mineral rights duty, on the rental value of all rights to work minerals, and of all mineral wayleaves, at the rate in each case of 1s. in the £ of that rental value. By Subsection (2) (c) of the same section it is also provided that the rental value shall be taken to be "In the case of a "mineral wayleave, the amount of rent paid by the working lessee in the "last working year in respect of the wayleave." In the defining section of the Act as to minerals—namely, Section 24—the expression "mineral "wayleave" is stated to mean "any wayleave, airleave, waterleave, or "right to use a shaft granted to or enjoyed by a working lessee, whether "above or under ground, for the purpose of access to or the conveyance "of the minerals, or the ventilation or drainage of his mine or otherwise "in connection with the working of the minerals."

S. leased certain land to the C. Coal Company for mining purposes, and the rent payable by the company under the lease included, *inter alia*, certain percentages calculated upon the amount of coal brought upon and carried over the grantor's land from mines which were not on the grantor's land, but which coal was the produce of "foreign" mines. Included in the total rent paid to S. in the year of assessment—namely, £4,966—were two sums of £436 7s. 11d. and £351 9s. 4d., received in respect of coal belonging to other owners, but brought to bank on S.'s property, and carried over the said property. S. was assessed in respect of these two sums as for mineral wayleaves, and appealed to one of the Referees under the Finance (1909-10) Act, 1910, contending that the mineral rights duty did not relate to the minerals not the property of the appellant, carried under the mineral wayleaves. The Referee decided that the sums were rightly included in the assessment, and stated a special case in regard to them.

Held (dismissing the appeal), that the decision of the Referee was correct.—(109 L. T., 559.)

[KING'S BENCH DIVISION.]

COMMISSIONERS OF INLAND REVENUE v. NICHOLLS.

[OCTOBER 30TH, 1913.]

Substituted Site Value—Mortgage—All Charges to be taken into Account—Finance (1909-10) Act, 1910, s. 2 (3).

This case raised an important question of principle on the clauses of the Finance (1909-10) Act, 1910, relating to substituted site value.

The property was mortgaged in 1891 for £12,500. In 1897 a further charge was created for £4,000, and in 1899 a second further charge of £1,000, making a total amount secured on the property by the mortgage and further charges of £17,500. In October, 1911, the Commissioners made a provisional valuation in which the gross value and total value of the property were put down at £12,000, and the full site value and assessable site value at £7,000. The owner applied to have a substituted site value adopted in accordance with the provisions of Section 2 (3) of the Finance Act. The Commissioners afterwards served a notice allowing a substituted site value of £7,300, which they arrived at by taking the one mortgage debt of £12,500 as the value on the "occasion" from which to make the statutory deductions. The owner was not satisfied with this, and claimed that at least £17,500 should be taken as the value on the "occasion" upon which to make the deductions. The owner's contention was upheld by the Referee.

The Commissioners appealed.

When the case was called, the Attorney-General (Sir John Simon), who with Mr. Finlay appeared for the Crown, said that the Commissioners had considered the matter further, and although they felt a difficulty in the construction of the section in the manner claimed by the owner they appreciated that it appeared a hardship not to allow all the three sums to be taken into account for the purposes of the substituted site value, and he was willing that the petition of appeal should be dismissed with costs.

Mr. E. P. Hewitt, K.C. (who with Mr. William Allen appeared for the owner of the property), said that in this case the owner was satisfied with a substituted site value worked out by taking the sum of £17,500 as the value on the "occasion" as it was so much larger than the value of £12,000 stated in the provisional valuation, but that he did not admit that the owner would not have been entitled to have a larger figure than £17,500 taken, bearing in mind that it was a case of a mortgage. It seemed clear to him (counsel) that if the last of the three mortgage transactions was taken in estimating the value of the property on the basis of the sum then advanced, regard must be had to the fact that it was an advance upon mortgage of an equity of redemption, and the amount owing under the prior charges must be taken into account.

Mr. Justice Scrutton said that his views on the question whether a larger sum could be taken as the value under the substituted site value clause in the case of a mortgage than the mortgage debt would be expressed on another occasion, but he saw no difficulty in the present case, and agreed that where there was more than one charge upon a property all the charges could be brought into account.

The appeal was accordingly dismissed with costs.—(*The Times*, 31st October, 1913.)

[KING'S BENCH DIVISION.]

SOUTHEND-ON-SEA ESTATES COMPANY (LIMITED) v.
INLAND REVENUE COMMISSIONERS.

[OCTOBER 30TH, 1913.]

Revenue—Undeveloped Land—Duty on Site Value—Exception for Leased Land—Power to Determine Lease—Exception from Exemption—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 16 & 17 (5).

By Section 16 of the Finance (1909-10) Act, 1910, a duty is payable on the site value of undeveloped land, but by Section 17 (5), "Where agricultural land is at the time of the passing of this Act held under a tenancy originally created by a lease or agreement made or entered into before the thirtieth day of April, nineteen hundred and nine, undeveloped land duty shall not be charged on the site value of the land during the original term of that lease or agreement while the tenancy continues thereunder. Provided that where the landlord has power to determine the tenancy of the whole or any part of the land, the tenancy of the land or that part of the land shall not be deemed for the purposes of this provision to continue after the earliest date after the commencement of this Act at which it is possible to determine the tenancy under that power."

The petitioners, who were the owners of certain agricultural land, leased it for seven years from 1904, subject to a covenant reserving to them liberty to resume possession of any part of the land for building or other purposes. During the currency of the lease the petitioners did not want the land for building and did not resume possession.

Held, that the fact that the owners did not want to determine the lease did not make it impossible for them to do so, and that therefore the duty was chargeable.

Mr. Justice Scrutton said that by Section 16 of the Finance (1909-10) Act, 1910, undeveloped land duty was payable in respect of the site value of undeveloped land, which in Subsection (2) was defined as land not

developed by the erection of dwelling-houses or of buildings for the purposes of industry, except agriculture, or was not used *bona fide* for any business, &c., other than agriculture. Undeveloped land, therefore, was all agricultural land, subject to this—that, by Section 17, Subsection (1), the duty was not payable where the site value did not exceed £50 an acre, and that the land only paid on the amount by which the site value exceeded the value for agricultural purposes. The object of the Act was that land which might be used for a more profitable purpose should not be kept from that use, and if it was should pay this duty. There was a further exemption under which the present question arose. The owner of agricultural land might have leased it before the Act came into force, and therefore might not have the power to develop it during the currency of the lease. Therefore a provision was made by Section 17, Subsection (5), of the Act. [His Lordship read the subsection.] The Commissioners assessed the land to the duty. Thereupon the petitioners appealed to the Referee, who affirmed the assessment, saying that the petitioners had power under the covenant to determine the lease, and that consequently they were within the proviso. It was admitted by the Crown that the petitioners did not during the currency of the lease want, *i.e.*, need, the land for building purposes. Mr. Hawke thereupon contended that that was enough to entitle him to succeed, for the lease could not be determined unless the petitioners *bona fide* wanted the land. The Crown replied that if that construction was correct a large part of undeveloped land duty would go, because the very object of the Act was to hit people who did not use for other than agricultural purposes land which was capable of other use, and if it was sufficient for an owner having power to terminate a lease to say, “I don’t want to use it for other purposes,” the very evil aimed at would occur. The section assumed that the landlord had power to determine, which meant power under the lease, absolute or conditional. He did not think—and this was why he decided this case against the petitioners—that the fact that a landlord who had the power to determine did not desire to do so, made it impossible for him to determine. The appeal must be dismissed.—(30 T. L. R., 45.)

This decision was reversed by the Court of Appeal December 1, 1913, when—

The Master of the Rolls, in his judgment, said that the appeal raised a curious point under Subsection 5 of Section 17 of the Finance (1909-10) Act, 1910. The question was whether the land must be treated as liable to undeveloped land duty. The Court had nothing to do with the policy of the Act; their duty was to construe its provisions, as best they could, always remembering that it was for the Crown to make out that the subject was liable to taxation. Subsection 5 contemplated cases where the landlord could not get possession of land which was in the hands of a tenant under a lease granted before the year 1909. It only applied to leases before that date, and so it was not of such wide importance as it might seem. In the present case the lease was granted in 1904 for seven years up to 1911, and the tenancy continued up to that date. It was a

purely agricultural lease, and the question was what was the effect of the provision which gave the landlord power to re-enter for building or other purposes. That provision did not give the landlord power to re-enter at his own will and pleasure; it did not authorise him to re-enter whenever he was minded or whenever he chose; there must be a definite purpose for which he wanted to resume possession. His Lordship attached no importance to the question whether the words "other purposes" referred to purposes *ejusdem generis* with building. Unless the landlord could say that he wished to resume possession for a purpose inconsistent with the tenant's enjoyment of the land for agricultural purposes, there was, in his Lordship's opinion, no right to re-enter at all. If the landlord said what he must be taken to have said, according to the admission of the Attorney-General, that he did not require the land for any purpose inconsistent with its enjoyment as a farm, the power of re-entry never arose and never became exerciseable, as it was only a power to take possession for some purpose inconsistent with agricultural purposes.

But it was said that the landlord might have desired to build or turn the land into a golf course, or use it for some other purpose, and if he had that purpose, which, in fact, he had not, the case came within the proviso to Subsection (5). His Lordship was unable to assent to that view. He thought that the landlord could not have resumed possession at any moment between 1909 and the termination of the lease, because if he had made the admission, which the Attorney-General had made in the present case, there would have been judgment in the tenant's favour. In his Lordship's opinion the difficulty which the Attorney-General had not got over was that the Crown had not shown any moment of time when the landlord could have resumed possession of the property. That being so, the case did not fall within the proviso to Subsection (5), but it fell within the earlier part of that subsection. The appeal must be allowed.

The Lords Justices also delivered judgments to the same effect.—(30 T. L. R., 142.)

[KING'S BENCH DIVISION.]

THE COMMISSIONERS OF INLAND REVENUE *v.*
WHIDBORNE.

[OCTOBER 30TH, 1913.]

Provisional Valuation—Deduction of Land for Streets—Proof to the Commissioners—Finance (1909-10) Act, 1910, s. 25.

The Attorney-General raised a preliminary point as to whether the "value attributable" had been *proved* to the Commissioners within the meaning of Section 25 (4) of the Finance (1909-10) Act, 1910.

The claim for deductions under Section 25 (4) had been made in the following form : " All the roads on this estate were made and dedicated by " the owner's predecessors in title," and claim for £50 deduction had been made in respect to Section 25 (4) (b) and (c), the value claimed to be attributable to capital expenditure and giving up of land for streets, roads, &c., not being separated.

The Commissioners claimed that no *proof* of the value attributable had been given, and that items (b) and (c) must be dealt with separately. The Commissioners admitted that there had been a proper claim, but they submitted that there had been no proper proof, and as a consequence it was suggested that no appeal lay to the Referee, and that the Referee could not deal with the question of the deductions for the " value attributable."

The Attorney-General urged that it was a matter of the greatest importance that it should not be possible for these deductions, which he submitted were entirely optional to the subject, not to be proved or attempted to be proved, but merely be claimed, and claimed in respect to matter which the Commissioners could not possibly know.

Mr. Justice Scrutton intimated that he was disposed, apart from anything Mr. Danckwerts might have to say, to think that if the matter was not proved to the Commissioners the owner had no appeal to the Referee, but he was prepared to hear the whole argument.

Mr. Danckwerts pointed out that, apart from the preliminary question as to proof, upon which he had something to say, there was an important question involved as to the principle upon which the deductions in Section 25 (4) (b) and (c) were to be made in the case of building estates. If Mr. Justice Scrutton should be against him on the preliminary point, he did not want a decision on the main question, as the appeal ought, in that case, to be dismissed, and what followed would be *obiter*, and not capable of being made the subject of appeal to the Court of Appeal and to the House of Lords.

If the judge decided that the Referee had no jurisdiction because no appeal lay to him under the circumstance, then it followed that no appeal lay to the judge except on the preliminary point, and the judge had no jurisdiction to decide the residue. The House of Lords had within a measurable time said : " We are not going to entertain points which ought " not to have been decided by the Court below."

The Attorney-General expressed himself as being in agreement with Mr. Danckwerts, but in spite of the importance of the issue, and the desire of both sides to arrive at a decision on important matters of principle, he could not waive the preliminary point. The question as to what was meant by saying that something had got to be proved to the Commissioners was one which arose over and over again, and those responsible for the valuation informed him that there were a great number of valuations which depended upon whether the Commissioners were entitled to do what they had done.

After consultation between the Attorney-General and Mr. Danckwerts, Mr. Danckwerts stated that he thought an understanding had been arrived at, but as regards the preliminary point, there was nowhere in the Act

any provision made for evidence at that stage. It had to be in the nature of a statement of fact advanced by the party for consideration by the Commissioners, which, of course, they were entitled to believe or disbelieve at their peril. There was no provision for the particular way in which proof was to be made to the Commissioners.

The owner, rightly or wrongly, had taken the view in this case from the correspondence with the district valuer that there was a question of principle between him and the Commissioners on which diametrically opposite views existed, and therefore the best thing to do was to put it in course for being decided by the proper tribunal. He would have asked his Lordship to come to the conclusion that the statement made in Form VII. was sufficient for a practical valuer to have come to the conclusion that there was a deduction to be made, and that it was impossible to put a separate figure for (b) and (c). But this would involve a partial discussion of the matter upon its merits, and in the circumstances he felt he was justified in the interests of his clients in agreeing to the proposal which the Attorney-General would announce.

The Attorney-General then stated that he thought the best course would be for the matter to be regarded as never having been discussed between the parties. The Commissioners would furnish the owner with new Forms VII., which would be promptly filled up, indicating whether any, and if so what, claim was made under any and what heads of deduction. The owner would then, if so disposed, take steps to prove to the Commissioners what part of the total value he alleged to be directly attributable to works or to be directly attributable to appropriation of land, or whatever it might be, and he would take his own course as to what he considered proper proof. The Commissioners would then have the opportunity of considering that, and, having considered it, they would deliver what they regarded as the proper provisional valuation. If this valuation was not satisfactory to the owner, he could appeal, and if possible the same referee would be appointed to hear the appeal.

It was understood that the matter should be proceeded with promptly on both sides in order to bring it to an issue as soon as possible. He suggested that costs in this petition should be reserved.

As regards Mr. Danckwerts' remarks on the matter of proof, he wished to say that he submitted that the "claim" on Form VII. was not the same as "proof." It was merely an indication that the owner proposed to try to prove them. What had to be proved was *value*. It was not sufficient to prove the facts. These had to be reduced to pounds, shillings, and pence. He also submitted that the two matters (b) and (c) were different, and should be dealt with under separate heads, and independently.

Mr. Justice Scrutton said: I only propose to say this, that I think everybody dealing with these matters should take note that (b), (c), and (d) have to be proved to the Commissioners, and in my view, if there is nothing before the Commissioners which can be called a proof of the subject-matter, there could be no appeal to the Referee, or evidence tendered which was not before the Commissioners. I do not propose to go further, because I have not considered the various points on which I think the Attorney-General and Mr. Danckwerts are not agreed. I do

not propose to go into what is proof ; but there must be proof before the Commissioners furnished by the owner, or there can be no appeal to the Referee.

Mr. Danckwerts : Your Lordship gives no opinion as to what proof is ?

Mr. Justice Scrutton : No, I am not discussing that. I should want to hear a good deal about that. I should be very slow to lay down any general rule apart from the particular facts. That is what I am intending to reserve.

Order agreed as follows : "Petition adjourned ; costs reserved ; parties agreeing to start *de novo* with delivery of Form VII. No objection to be taken in respect of time already elapsed before delivery of Form VII. "Both sides undertake to facilitate future steps."—(*The Land Union Reports of Appeals*, vol. 2, p. 136.)

For the appellants : The Attorney-General and W. Finlay, instructed by the Solicitor of Inland Revenue.

For the defendants : Danckwerts, K.C., and William Allen, instructed by Lucas & Son.

[KING'S BENCH DIVISION.]

COMMISSIONERS OF INLAND REVENUE *v.* T. C. HEWITT.

[NOVEMBER 1ST, 1913.]

Increment Value Duty—Sale of a Leasehold House—Finance (1909-10) Act, 1910, s. 2.

JUDGMENT.

Mr. Justice Scrutton : This is an appeal by the Commissioners of Inland Revenue against a decision of the Referee under the Finance Act, 1910, which held that no increment duty was payable under that Act on the occasion of the sale by one Hewitt of a leasehold interest in the house No. 20, Ulleswater Road, in the parish of Southgate, as there was no increment.

Increment duty is payable on the increment value of any land, namely, the amount by which the site value of any land as ascertained in accordance with Section 2 of the Act exceeds the original site value of the land. There having been no appeal against the original provisional valuation of £105, as assessable site value of the land in question, this sum must be taken as the original site value, and the question is, What is the site value on the occasion on which increment duty is to be collected ? This occasion was the sale on July 29, 1911, of a leasehold interest in the land having

ninety-four years to run for £425. Section 2 (2) (b) of the Act directs the site value of the land on the occasion to be taken as the value of the fee simple of the land calculated on the basis of the value of the consideration for the transfer of the interest, and subject to the deductions hereinafter mentioned. This consideration was £425, and as there was also another interest in the land, namely, the reversion, and incident thereto an annual ground rent of £8 for ninety-nine years, the Commissioners capitalised this at twenty-four years' purchase as £192, added it to the £425 consideration, and got a value in fee simple of £617. They treated the reversion on the determination of the ninety-four years' lease as of no practical value, apart from the ground rent; this value, so ascertained, was by the section to be subject to the like deductions as are made under the general provisions of Part I. of the Act as to valuation for the purpose of arriving at the site value of land by deductions from the total value. These deductions are made under Section 25 (4). The first is: (a) The same amount as is to be deducted for the purpose of arriving at full site value from gross value. This amount is defined in Section 25 (2), and is the difference between gross value and the value which the fee simple of the land, if sold at the time in the open market by a willing seller, might be expected to realise if the land were divested of any buildings and structures, and growing timber, &c. This requires us to find (1) the gross value of the land and buildings on the occasion, July 29, and (2) the amount which, without the buildings and crops, the land would fetch in the market on that day. The difference, with any other statutory deductions deducted from the value based on consideration, will be the site value on occasion.

The Commissioners alleged that the gross value and site value on the occasion were the same as in the original valuation, namely, £592 and £130 respectively, showing a difference of £462, and they therefore deducted from £617, the value based on consideration, this sum of £462, and a further sum of £25 for sewers, giving an assessable site value on occasion, or site value calculated under Section 2 (1) of £130 (£617 less £487). Comparing this with £105, the admitted original site value, they claimed an increment value subject to taxation of £25.

If the Commissioners were right in their facts, their method of valuation was that laid down by Mr. Justice Horridge, and approved by the majority of the Court of Appeal, in Lumsden's case ([1913], 1 K. B., p. 346), and not yet reported in the Court of Appeal.

It is true that the method results in showing an increment value in a case where the assessable site value as calculated under Section 25 has not increased, or, in other words, in taxing as increment in value of site something which is not increased value of site. But this result follows from calculating from consideration or purchase price under Section 2, and comparing it with market value under Section 25. In the case of an excessive price it will result in paying increment tax on the gain or profit to the vendor; in the case of a forced sale at a loss it may result in the vendor's escaping payment. But in either case if, as I think, and as three judges out of the four in Lumsden's case thought, the directions of the statute are plain, the remedy is with the Legislature and not with the

Courts. If, as the respondent contended, the gross value under Section 25 on an occasion is to be found in the consideration value under Section 2, it is difficult to see why consideration was ever introduced, for, as pointed out by the Attorney-General and Mr. Justice Horridge in Lumsden's case, whether the purchase price received by the vendor be £1,000 or £5,000, a very different thing for him, the increment value calculated on a purchase price first added and then deducted would be the same in either case.

The Commissioners having their £25 increment value reduced it by 10 per cent. of the original site value (£10 10s.) to £14 10s., took £1 for each complete £5 of this, namely, £2, and allotted to the appellant £1 19s., being $\frac{975}{1000}$ of the £2.

The Referee, Sir Alexander Stenning, without finding facts or giving reasons, decided on February 19, 1912: "That there was no increment 'in the site value on the occasion of the sale on July 29, 1911.'" If I thought that adopting the true principle of calculation under Lumsden's case the Referee had found as facts the consideration value under Section 2, and the gross and site value under Section 25, so as to give this result, I should be very slow to disturb the findings of so experienced a Referee as Sir Alexander Stenning in a matter with which he is specially familiar. But at the time the Referee decided this case Lumsden's case had not been decided. No evidence was given before him, and I am not satisfied that he ever saw the land in question. The case was argued on the assumption that the gross and site values under Section 25 had not changed since their amount on April 30, 1909, was fixed in the provisional valuation, and the Crown argued that the effect of bringing in the consideration value under Section 2 was, by the statutory rules of calculation, to make increment duty payable. I think that the Referee rejected this view, and his finding is, in my view, the same in construction as that of the Referee in Lumsden's case, which was rejected by the Court of Appeal. I have therefore no findings of values such as the Referee in Lumsden's case gave the Court, and I heard evidence on both sides on the true values to be fixed. That I did so must not be taken as precedent for allowing a party who has fought on construction before the Referee, without challenging figures, to challenge the figures in the High Court when he is beaten on construction, but I thought it fairer in this case, where there was some uncertainty as to what the Referee had really decided, to investigate the question for myself. I therefore considered the evidence carefully. I find that the value of the fee simple of the land on July 29, 1911, calculated on the basis of the value of the consideration on the occasion was £617. This turned on the number of years' purchase of the ground rent to be added to £425, the consideration for the transfer of the lease, and the Crown valuer was confirmed as to the number of years to be allowed by the respondent's local witness.

I find that the gross value of the land on July 29, 1911, calculated according to Section 25, was £592, being the amount which the land would realise if sold at that time in the open market by a willing seller. The parties agreed, and I find, that the full site value on the same date was £130, and that there had been no substantial change, at any rate no

increase in the values so assessed between April 30, 1909, and July 29, 1911.

Given these values, and on the rules of calculation laid down in Lumsden's case, an increment value of £25 followed, and the decision of the Referee to the contrary was therefore erroneous.

The respondents, though they had not raised the point before the Referee, challenged by point five of their submissions the calculation of the increment value duty of £1 19s. from the increment value of £25 on the ground that it was incorrectly calculated under the rules, and that the rules were unauthorised and *ultra vires*.

Section 3 (3) of the Act provides that where an interest in land is transferred such proportionate part of the duty shall be collected as may be determined by the Commissioners in accordance with rules made by them for the purpose. The Commissioners accordingly framed certain rules (1910, No. 712). It may be that these rules do not deal with a particular case, but if they do I am at a loss to understand how they are *ultra vires*, even though the Judge who considers them would have made a different rule.

The calculation made by the Commissioners which appears on the back of the Notice of Assessment of October 26, 1911, undoubtedly is in order up to the point where the net duty payable is found to be £2. It is then found that the proper proportion of the leasehold interest transferred is .975, or £1 19s., leaving 1s. to be paid by the reversion and ground rent incident thereto. Considering that the leasehold was taken at £425, and reversion with ground rent at £182 in the Crown valuation of £617, based in consideration, it seems odd that the proper proportion is 39s. for the £425, and 1s. for the £182. Seven-tenths and three-tenths, or 28s. and 12s., would look more like rough natural justice. The Crown calculator conceived himself bound by the Crown rules only to ascertain what proportion the leasehold interest (ninety-four years) bore to the fee simple—or ninety-nine years' term—which he calculated to be .975, and it was admitted to me that the same result would follow whatever the relative proportions of the value of the leasehold interest, and the ground rent, once the leasehold term was ninety-four years. Though the ground rent was so large that the leasehold was nearly valueless, the leasehold would still bear thirty-nine-fortieths of the tax, and the ground rent one-fortieth. This struck me as so odd as to raise the gravest suspicion that the rules had either been misconstrued or applied to a question they never were framed to cover.

The Government rules provided (3·2) that the duty on an occasion should be the proper proportion at the date of the occasion, and "proper proportion" was defined (1·1) as "the ratio of the present value of an annuity for the term of the interest under review to the present value of the same annuity in perpetuity." This appears to contemplate succession of interests in time, not co-existing or simultaneous interests between which the duty was to be proportioned. Indeed, when I asked the Crown counsel how the rules were applied to a transfer if the first "interest in land" mentioned in the definition in Section 41, "an undivided share in a fee simple in possession," was, say, a moiety, they frankly admitted that this

case, with that of other simultaneous interests had been overlooked, and was not provided for in the rule, though in practice they disregarded the rule and in such a case halved the duty. But they said that the case before me was provided for in the rule, that the term of interest under review was ninety-four years, and the ratio of this to perpetuity was ninety-four to ninety-nine years, whence they get the decimal fraction on which they calculated the duty— $\frac{94}{99}$, and that the proportion was calculated in this way quite independently of the value of the reversion, and the ground rent incidental to it, because the increase in increment value probably benefited the leasehold interest only. This seems to me to be true when increment duty is claimed under the method of calculation in Lumsden's case by reason of a sale of a leasehold interest at an excessive price, but the ground rent might be sold at an excessive price, which under Lumsden's case would create increment value and a claim to increment duty, in which case the Commissioners' rule would put the greater part of the duty on the interest not benefiting.

However, in view of the argument of the Crown, I cannot say that the Commissioners' rule may not be read to cover the case, in which case the fact that it appears to lead to startling and even unjust results is not a matter for review by the High Court. As the Commissioners will have apparently to make new rules to apportion duties in the case of co-existing and collateral interests—a case which they admit has been overlooked—I think they might consider the question whether the rule really represents their intention as to proportion between ground rents and leasehold interests, testing their rules by the case where increment value is obtained, as in Lumsden's case, by a sale of ground rents at a high price, and the question is what share of the increment duty the vendor of the ground rents is to bear.

In the result, therefore, the appeal must be allowed, and the respondent declared liable to pay increment duty to the extent of £1 19s. The Crown must have the costs of the appeal.

I only desire further to say that the amount of dispute here was 39s., and that assuming Lumsden's case was correctly decided, no question of principle seems to arise which would justify the large expenditure of money which must result from arguing this case. I cannot see that the Crown gained any advantage from appealing this case which justified the costs incurred, or that the respondent gained any benefit from forcing this appeal on for hearing instead of waiting the result of Lumsden's case which justified the costs incurred by them. There will probably be enough troublesome and important questions under this Act, without setting right all the small mistakes made by Referees, before the leading cases are determined which will ultimately settle the practice under the Act.

The appeal was allowed, with costs. Leave to appeal was refused, the Crown undertaking to revise the judgment in the event of the Lumsden judgment being reversed in the House of Lords.—(*The Land Union Reports of Appeals*, vol. 2, p. 138.)

For the appellants: Sir John Simon, A.G., and W. Finlay, instructed by the Solicitor of Inland Revenue.

For the respondent: E. P. Hewitt, K.C., and William Allen, instructed by Percy H. Webb.

[COURT OF APPEAL.]

MARQUESS CAMDEN *v.* INLAND REVENUE COMMISSIONERS.

[DECEMBER 5TH AND 19TH, 1913.]

Revenue Reversion Duty—Mode of Assessment—Improvement agreed to be made by Lessee—"Nominal Rent"—Evidence of Meaning—Inadmissibility—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8) s. 13.

Evidence as to whether an expression in an Act which applies to the whole of Great Britain, and which does not relate to any local custom, ought to be given a specific technical meaning is inadmissible.

Evidence as to the technical meaning of the expression "nominal rent" in the professional practice of surveyors held inadmissible on the question of the meaning of that expression in Section 13 of the Finance (1909-10) Act, 1910.

By that section, in calculating reversion duty, the total value of the land at the time of the original grant of the lease is to be ascertained on the basis of the rent reserved and payments made in consideration of the lease (including, in cases where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings or to expend any sums upon the property).

The owner of certain premises granted a lease at a yearly rent, the lessee agreeing to do certain works. The lessee expended £6,000 in improving the premises, and as this sum largely exceeded his estimate, he asked for an extension of the term. Accordingly a fresh lease for a longer term was granted to him, "in consideration (*inter alia*) of the expenditure incurred "by the lessee."

Held, that in assessing the reversion duty payable on the surrender of the original lease, the expenditure incurred by the lessee must be included in the "payments made in consideration of the lease," as those words of the section were not confined to payments made to the lessor.

Decision of Horridge, J., reversed.

This was an appeal against a decision of Mr. Justice Horridge on an appeal against the decision of the Referee with regard to the original total value of certain land.

By an agreement dated June 6, 1889, one W. H. Wilson agreed to take from the trustees of the will of the second Marquess Camden a lease of certain premises in Camden Street and Archer Street, the subject-matter of the assessment, at a yearly rent of £125 for a term of twenty-one years from September 29, 1889, as to certain of the property, and twenty years from September 29, 1890, as to the rest. Wilson agreed to carry out certain works specified in the schedule. As Wilson found that the sum required to be expended very largely exceeded his estimate, in December, 1890, he asked for an extension of the term to forty years. By an agreement of February 17, 1891, Wilson agreed to take from the trustees a lease of the premises in Camden Street and Archer Street at a yearly

rent of £125 for a term of forty years from September 29, 1889, as to part, and for thirty-nine years from September 29, 1890, as to the rest, and he agreed to carry out certain works. There were six indentures of lease all in the same form, and the rent of £125 was apportioned between the different properties. In each of the six leases it was recited that the lease was granted in consideration of the expenditure incurred by the lessee in adding to, improving, and repairing the messuages and buildings thereby demised, and the rents and covenants on the part of Wilson thereafter reserved and contained. Before the grant of the leases Wilson expended in pursuance of his agreements £6,000 upon the works. The full rental value of the land and buildings at the time of granting the leases was £811, and the rent of £125 was considerably below the ground rent which could have been obtained from the land and buildings.

The Commissioners of Inland Revenue assessed the reversion duty as being payable on the surrender of the leases of June 6, 1889. The petitioners appealed against the assessment to the Referee. The Referee decided that the total value at the date of the grant of the leases was to be ascertained by taking twenty-five years' purchase of the ground rent; that the rents reserved in the leases were not nominal rents; and that in ascertaining the total value at the end of the lease no consideration was to be given for the payments in consideration of the lease.

Mr. Justice Horridge affirmed the decision of the Referee and dismissed the petitioners' appeal.

The petitioners now appealed to the Court of Appeal.

Mr. Danckwerts, K.C., and Mr. W. Allen appeared for the appellants; the Attorney-General and Mr. W. R. Sheldon appeared for the respondents.

At the hearing before Mr. Justice Horridge the appellants sought to put questions to a witness to prove that the words "nominal rent" had a technical meaning in the professional practice of surveyors dealing with property and the letting thereof, and it was contended that such evidence could be used for the purpose of construing the words "nominal rent" in Section 13 of the Finance (1909-10) Act, 1910.

This question was dealt with separately, and the Court held that the evidence was inadmissible.

The Master of the Rolls in his judgment on this point said that this was a separate point which it had been thought convenient to dispose of first. The main question was as to the liability of the appellants to reversion duty, and that depended on Section 13 of the Finance (1909-10) Act, 1910, which contained in one or two places the phrase "nominal rent." An application was made by Mr. Danckwerts in the Court below to ask a question of a witness which was in perfectly proper form if it could in principle be asked at all. The Court was asked to say that, in dealing with a modern Act of Parliament, which was in language understandable by everybody, and was applicable to the whole of Great Britain, and did not relate to any local custom, it ought to take evidence as to whether an expression in the Act ought to be given a specific technical meaning. No case had been called to the attention of the Court where in

dealing with a modern statute such evidence had been admitted. The duty of the Court was to interpret and give full effect to the words in the statute, and it was not relevant what a particular branch of the public meant by the words. It was for the Court to construe the words as best it could. The Court might inform itself in any way it could by reference to the standard works of authors and dictionaries, but to say that it ought to allow evidence to be given as to whether there was a technical meaning would be to contravene what seemed to his Lordship to be the settled rule of interpretation. It was said that the Court drew no distinction between statutes and other written documents in this respect, but his Lordship was not prepared to say that that was entirely true. His Lordship said that decisions which had been given seemed to have defined properly the limits of the doctrine, and he referred to *Shore v. Wilson* (9 Cl. and F., 355). There were many instances to show that the Court might consult literary authorities, but what it was now being asked to do was contrary to authority and would be the worst possible precedent. The appeal on this point must be dismissed.

The Lords Justices delivered judgments to the same effect.

The hearing of the main appeal was then continued, and at the conclusion of the argument their Lordships took time to consider their decision.

The Court on December 19 allowed the appeal.

The Master of the Rolls said that this appeal raised an important question as to the extent of the liability for reversion duty under the Finance (1909-10) Act, 1910. His Lordship then stated the material facts, and continued :—

By Section 13, Subsection (1), the subject is to be taxed “on the value “ of the benefit accruing to the lessor by reason of the determination of the “ lease.” That is the main guiding principle. Subsection (2) states what is to be deemed to be the value of the benefit accruing to the lessor. First ascertain the total value, within the meaning of Section 25, of the land at the time when the lease determines, subject to certain deductions not material to the present case, and next the total value of the land at the time of the original grant of the lease is “to be ascertained on the basis of “ the rent reserved and payments made in consideration of the lease “ (including, in cases where a nominal rent only has been reserved, the “ value of any covenant or undertaking to erect buildings or to expend “ any sums upon the property).” Now it is important to observe that the whole £6,000 was spent before the lease was granted. That sum was really part of the consideration for the lease, and must be regarded in a wholly different way from sums paid during the currency of the lease in performance or satisfaction of the covenants contained in the lease. It seems to me that the case falls within the precise language of Subsection (2). It was urged by the Attorney-General that “payments made” in consideration of the lease meant payments made to the lessor, and are not satisfied by payments which in substance are put into the land demised. I am unable to accept this view. It by no means follows that a premium or fine is payable to the lessor. Indeed, the contrary is expressly provided in Section 4 of the Settled Land Act, 1884 : “ A fine received on the grant

“ of a lease under any power conferred by the Act of 1882 is to be deemed “ capital money arising under that Act.” The fine must be paid to the trustees of the settlement. I see no reason for holding that the payments must be to the lessor. Suppose there are two plots of land of equal value. The landlord says to A, “If you will spend £1,000 in building a house “ on the first plot, I will grant you a lease of it for ninety-nine years at “ a rent of £x.” The landlord says to B, “If you will pay me £1,000, I will “ build a house on the second plot, and will grant you a lease for ninety- “ nine years at a rent of £x.” Is there any real difference between these two cases ? In my opinion there is not. Stress was laid by the Attorney-General upon the inconvenience, amounting almost to impossibility, of ascertaining what was the value, at the beginning of a long term, of work done upon the premises. This difficulty necessarily arises when a “ nominal rent only” has been reserved, and I think it is of no importance in interpreting the section. In my opinion the judgment of Mr. Justice Horridge was wrong, and the appeal ought to be allowed.

The Lords Justices delivered judgment to the same effect.—(30 T. L. R., 225.)

[Appeal pending in the House of Lords.]

[COURT OF APPEAL.]

HAYLLAR . INLAND REVENUE COMMISSIONERS.

[DECEMBER 8TH, 1913.]

Revenue—Land—Increment Value Duty—Mortgage—Substituted Site Value—Method of Estimation—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 2 & 25.

Two houses of equal value were mortgaged to trustees in 1898 for £1,600, subject to existing yearly tenancies at a rack-rent. In 1912 the Inland Revenue Commissioners, under Section 25 of the Finance (1909-10) Act, 1910, fixed the original total value of each house at £800, and the original assessable site value at £190. The owner subsequently applied to the Commissioners, under Section 2 (3) of the Act, for a substituted site value, and contended that as the trustees could only lend up to two-thirds of the value of the property this showed that the total value of each house at the time of the mortgage was £1,200. If this figure had been taken as the total value, the substituted site value of each house would have been £273. The Commissioners refused the application on the ground that they were only bound to add to the £1,600 secured by the mortgage any value which the fee simple of the land had in excess of £1,600, and that as each house was mortgaged subject to existing tenancies at a rack-rent there was no such excess ; in other words, that the excess of the value of the fee simple over the value of the interest mortgaged was nil. The

Referee found that the total value of each house at the time of the mortgage was £1,200, but he was of opinion that the Commissioners had rightly refused the application to substitute a site value exceeding the original site value.

Held, that the enactment in Section 2 (3), that the provision as to substituting in certain cases for the original site value the value of the consideration on a transfer, should apply to a mortgage with the substitution of the amount secured by the mortgage for the consideration, showed that the Commissioners were right in refusing the owner's application.

Decision of Scrutton, J., reversed.—(30 T. L. R., 172.)

[KING'S BENCH DIVISION.]

JOHN ALLEN v. THE COMMISSIONERS OF INLAND
REVENUE.

[DECEMBER 8TH AND 13TH, 1913.]

*Undeveloped Land Duty—Contract of Sale—Payment by Instalments—
Owner for the Time being—Land used bona-fide for a Business,
Trade, or Industry—Finance (1909-10) Act, 1910 (10 Edw. VII.,
c. 8) ss. 16 (2), 19 & 41.*

Mr. Hewitt said that the appeal was against an assessment for undeveloped land duty on certain land near Bedford, and the substantial point in the case was whether the appellant was the owner of the land within the meaning of Section 19 of the Finance Act. In their notice of Contentions of Law the Commissioners had raised a new point in which they suggested that neither the Referee nor the Court had jurisdiction, and that the procedure was irregular. Mr. Hewitt contended that it was too late to raise this point now, and further that the objection was not well founded.

The learned Judge called upon the Solicitor-General to argue this preliminary point. The Solicitor-General said that an appeal only lay in cases provided for by Section 33 of the Act, and contended that the present case did not fall within the words of Section 33, that the owner for the time being within the meaning of Section 19 was the person who happened to be the owner at the time when proceedings might be instituted to recover the duty, and that no proceedings had as yet been taken in the present case, that there had been no determination by the Commissioners within the meaning of Section 33, and that accordingly neither the Referee nor the Court had jurisdiction to deal with the matter. He admitted that an appeal lay under Section 33 against the *amount* of any assessment, but here the amount of the assessment was not in dispute, and he contended that an appeal would not lie under Section 33 upon the question whether Mr. Allen was the person chargeable with the duty.

Mr. Hewitt contended that the Commissioners had in fact "determined" the question whether the appellant was owner by making the assessment, and the correspondence showed that they had done this after taking advice, and he submitted that the question whether the vendor or the purchaser was the owner within Section 19 was one which the Commissioners had power to determine (provisionally and subject to appeal), and that Section 33 applied.

The Reference Committee (of which the Master of the Rolls was a member) had impliedly decided that an appeal lay, since it twice extended the time for appeal. The Commissioners were, in fact, met at every point in the administration of the Act by questions of construction, and unless they had power (subject, of course, to appeal) to determine such questions, the Act would be unworkable. Such power had been assumed in numerous cases, as, for example, in the Camden case, where the question was as to the meaning of the words "nominal rent"; the Southend Estate case, where the meaning of "power to determine" a lease in Section 17 had to be decided; and in the "mineral wayleave" case.

Mr. Justice Scrutton intimated that he did not intend to stop the case upon this preliminary point, but would hear the matter upon its merits.

Mr. Hewitt then opened the case, stating that the appellant carried on business as a land developer, his method being to purchase land, cut it up into plots, and to sell the plots to different persons on terms under which each purchaser paid a deposit on the signing of the contract, and was let into possession, the balance of the purchase money being paid with interest by gradual instalments, and when a purchaser had paid all his instalments his plot was conveyed to him. This was the method adopted in respect of the plots in question. In each case the appellant had agreed to sell the plot before any assessment for undeveloped land duty was made, and the purchaser had paid a deposit and been let into possession, and had accepted the title, but the instalments not having been fully paid, no conveyance had been executed.

Mr. Hewitt contended that the appellant was not at the date of assessment the "owner" within Section 19. Section 41 defined "owner" as the person entitled in possession to the rents and profits in virtue of any estate of freehold. The purchaser was the owner in equity, and he had in equity an estate of freehold, and was in enjoyment of the rents and profits. As soon as the contract was entered into the purchaser became entitled to the land (subject to the obligation of paying the balance of purchase money), and the vendor became entitled to the purchase money, and there was a conversion in equity, so that if the vendor died intestate his interest in the property, which consisted of his lien for balance of purchase money, would pass to his next of kin, and not to his heir-at-law. Counsel quoted, amongst other authorities, *Dart, V. and P.*, 7th edn., 287; *Shaw v. Foster*, L. R., 11, 321; *Lysaght v. Edwards*, L. R., 2 Ch. D., 499.

If, contrary to his contention, it should be held that the appellant was the owner, and in possession, then the land ought to be treated as "developed" for the purposes of the appellant's business.

The Solicitor-General said that the real question was whether the word "owner" in Section 19 meant the legal owner or the owner in

equity. He submitted that the "owner" defined by Section 41 referred to the legal owner, and this was not merely for cases falling within Section 19, but for all the purposes of Part I. of the Finance Act, 1910. The present appellant was clearly the legal owner, no conveyance having been executed, and his estate was an estate of freehold in possession. The Solicitor-General admitted that the purchaser was entitled in equity to an estate of freehold, but contended that he was not the owner within the meaning of the Act, that the Act looked to the legal estate, and did not concern itself with the beneficial interests. Where there was a trust the Commissioners had to look to the trustees, who had the legal estate, to pay the duty, and not to the persons entitled to equitable interests.

Mr. Justice Scrutton : In the case of a mortgagee do you say that the mortgagee or the mortgagor is the owner ?

The mortgagee : He has the legal estate, and he is the owner. The purchasers, in the present case, although in occupation, could not create a valid tenancy, or recover rent ; nor were they entitled to the rents and profits of the land. Only the legal owner of land was entitled to the rent and profits. [The Solicitor-General referred to Stroud's *Judicial Dictionary* as to the meaning of "rents and profits."]

Mr. Hewitt, in reply, said that according to the Solicitor-General's argument the question depended entirely upon who happened to possess the legal estate. This argument, if adopted, would lead to strange results; the mere possession of the bare legal estate would involve a person in personal liability for undeveloped land duty and the other duties imposed by the Act. Land was sometimes dealt with for years with the legal estate outstanding, and without it being known where the legal estate was.

A mortgagor in possession was owner within Section 41, and it would come as a surprise to mortgagees if it were held that the mortgagee was owner and personally liable for the duties. In the present case the purchasers were in possession, and if they grew crops the same would belong to them, and if they created a tenancy they could recover the rent.

JUDGMENT.

Mr. Justice Scrutton : This was an appeal by John Allen against a decision of a Referee awarding that he was the "owner" of certain plots of land in respect of which the Commissioners of Inland Revenue had assessed him to undeveloped land duty on a small amount, the exact accuracy of which was not in question on the appeal. Allen contended that he was not the "owner" within the meaning of the Finance Act, 1910, and that the land was not undeveloped land, as it was used in his business of a land developer by being offered for sale.

The facts were shortly as follows: Allen bought land, cut it up into plots, and sold it, in many cases, including the cases in question, providing for payment by instalments, with interest at 5 per cent.; power to vendor to rescind on failure to pay instalments, and conveyance to the purchaser on completion of the payments. Occupation was, in fact, given to the purchaser on the making of the contract. In all the cases, at the date of

these assessments appealed against, the purchaser was in possession, but had not got his conveyance as he had not completed payment of his instalments.

The Crown raised the preliminary point that neither the Referee nor the High Court could decide whether Allen was a person chargeable with the duty. It was said that Section 19 of the Act of 1910 only required the Commissioners to assess the duty, and then made it recoverable from "the owner of the land for the time being," that is at the time when proceedings were taken to recover it, when the chargeability of the defendants would be decided in the proceedings on the information. It was further said that Section 33 of the Act of 1910 only gave an appeal in respect of "the amount of any assessment of duty under the Act, or against the determination of any other matter which the Commissioners are to determine or may determine under this part of the Act." The Solicitor-General agreed that an appeal lay against the amount of the assessment or in respect of the chargeability of the subject-matter, that is whether it was undeveloped land or not; but argued that an appeal did not lie in respect of the chargeability of the person assessed—that is, whether he was the owner for the time being of such land. The facts which may be relevant to this point are that on March 26, 1912, the Commissioners served on "J. Allen, Esquire" a notice "That the Commissioners have made an assessment on you" for undeveloped land duty in respect of certain plots of land; "And further take notice that the aforesaid duty should be paid to the Accountant-General," and "If you intend to appeal to a Referee against this assessment you should give notice to the Reference Committee within thirty days from this date on forms which will be supplied to you on application, by me." Under threat of proceedings Allen obtained, with the assent of the Commissioners, an extension of time to appeal, and gave notice of appeal against the assessment on the ground "that I am not the person liable for payment of the said duty under the provisions of the Act." The appeal was heard before the Referee without any objection by the Commissioners; but the point was first raised before me by the Solicitor-General that no appeal lay to a Referee or from him to the High Court on the question of assessability as distinguished from amount of assessment.

I hold that this objection fails. Section 19 requires the Commissioners to assess undeveloped land duty, and Section 30 requires them to record particulars of all assessments, and to furnish copies of particulars so recorded to any person interested in the land. They had entered in their book "J. Allen" as "owner chargeable," with a notice that an assessment had been notified to him, and they had, in fact, served him with a notice of assessment, and notice to pay. He seems to me clearly "a person aggrieved" within Section 33, and it is admitted he can appeal on the point whether the land is undeveloped land. I think the provision that he can appeal against the amount of any assessment allows him to appeal on the question whether he is rightly assessed at all. This is borne out by the language of the Appeal Rule 4 (2), which speaks of "an appeal against any assessment of duty."

On the merits of the appeal, Mr. Hewitt, for the appellant, contended,

first, that Mr. Allen was not owner of the land within the definition in Section 41. "The expression 'owner' means the person entitled in possession to the rents and profits of the lands in virtue of any estate of freehold," except where land is let on lease for a term of which more than fifty years are unexpired. That this definition is not one of perfect clearness appears from the fact that on my asking counsel whether a mortgagee out of possession or his mortgagor was "owner" under this definition, the Solicitor-General replied "The mortgagee," and Mr. Hewitt "The mortgagor." This point remains for decision in a future case. In the present case Allen had contracted to sell a plot of land for a price payable by instalments with interest, with power to rescind on non-payment of instalments, and a duty to convey the land when the price was paid, and not before. He had also let the purchaser into possession of the land. His legal position is stated by Sir George Jessel in *Lysaght v. Edwards* (L. R., 2 Ch. D., p. 506) thus: "What is the effect of the contract? It appears to me that the effect of a contract for sale has been settled for more than two centuries; certainly it was completely settled before the time of Lord Hardwicke, who speaks of the settled doctrine of the Court as to it. What is that doctrine? It is that the moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase money, a charge or lien on the estate for the security of that purchase money, and a right to retain possession of the estate until the purchase money is paid, in the absence of express contract as to the time of delivering possession." I pause to remark that in this case, though there is nothing in the contract providing for it, in fact, the purchaser goes into possession, when the contract is made, of this estate. "In other words, the position of the vendor is something between what has been called a naked or bare trustee or a mere trustee (that is, a person without beneficial interest), and a mortgagee who is not, in equity (any more than a vendor), the owner of the estate, but is, in certain events, entitled to what the unpaid vendor is, viz., possession of the estate and a charge upon the estate for his purchase money. Their positions are analagous in another way. The unpaid mortgagee has a right to foreclose, that is to say, he has a right to say to the mortgagor, 'Either pay me within a limited time, or you lose your estate,' and in default of payment he becomes absolute owner of it. So, although there has been a valid contract of sale, the vendor has a similar right in a Court of Equity; he has a right to say to the purchaser, 'Either pay me the purchase money or lose the estate.' Such a decree has sometimes been called a decree for cancellation of the contract; time is given by a decree of the Court of Equity, or now by a judgment of the High Court of Justice; and if the time expires without the money being paid the contract is cancelled by the decree or judgment of the Court, and the vendor becomes again the owner of the estate. But that, as it appears to me, is a totally different thing from the contract being cancelled because there was some equitable ground for setting it aside. If a valid contract is cancelled for non-payment of the purchase money after the death of the vendor, the property will still in equity be treated as having been

" converted into personalty, because the contract was valid at his death ;
 " while in the other case there will not be conversion, because there never
 " was in equity a valid contract. Now what is the meaning of the term
 " ' valid contract ' ? ' Valid contract ' means in every case a contract
 " sufficient in form and in substance, so that there is no ground whatever
 " for setting it aside as between the vendor and purchaser—a contract
 " binding on both parties. As regards real estate, however, another
 " element of validity is required. The vendor must be in a position to
 " make a title according to the contract, and the contract will not be a valid
 " contract unless he has either made out his title according to the contract
 " or the purchaser has accepted the title, for however bad the title may be
 " the purchaser has a right to accept it, and the moment he has accepted the
 " title the contract is fully binding upon the vendor. Consequently, if the
 " title is accepted in the lifetime of the vendor, and there is no reason for
 " setting aside the contract, then, although the purchase money is unpaid,
 " the contract is valid and, binding ; and being a valid contract, it has this
 " remarkable effect, that it converts the estate, so to say, in equity ; it makes
 " the purchase money a part of the personal estate of the vendor, and it
 " makes the land a part of the real estate of the vendee, and therefore all
 " those cases on the doctrine of constructive conversion are founded simply
 " on this, that a valid contract actually changes the ownership of the estate
 " in equity. That being so, is the vendor less a trustee because he has the
 " rights which I have mentioned ? I do not see how it is possible to say so.
 " If anything happens to the estate between the time of sale and the time of
 " completion of the purchase it is at the risk of the purchaser. If it is a
 " house that is sold, and the house is burnt down, the purchaser loses the
 " house. He must insure it himself if he wants to provide against such an
 " accident. If it is a garden, and a river overflows its banks without any
 " fault of the vendor, the garden will be ruined, but the loss will be the
 " purchaser's. In the same way there is a correlative liability on the part of
 " the vendor in possession. He is not entitled to treat the estate as his own.
 " If he wilfully damages or injures it, he is liable to the purchaser, and more
 " than that, he is liable if he does not take reasonable care of it. So far he
 " is treated in all respects as a trustee, subject, of course, to his right to
 " being paid the purchase money, and his right to enforce his security
 " against the estate. With those exceptions, and his rights to rents till the
 " day of completion, he appears to me to have no other rights."

I have read that passage at considerable length because it is a matter
 in which it appears to me one of the greatest Masters of Equity expressed
 his view of the relationships under this contract, with this difference, that
 Sir George Jessel is speaking of a vendor who is in possession, and a pur-
 chaser who is out of possession, whereas in this case the purchaser is in
 possession. As between such a vendor and such a purchaser, who is the
 " owner " under Section 41 of the Act ? Such an owner is defined as :
 (1) A person entitled to rents and profits ; (2) entitled in possession,
 which I take to be contrasted with " entitled in reversion," and not to
 mean " entitled to possession " ; (3) entitled in virtue of any estate of free-
 hold, which I take to be an estate in lands of free tenure as distinguished
 from copyhold tenure, held for an uncertain period as distinguished from

a fixed term of years. This term is probably used here to exclude leasehold interests except the fifty years' term next mentioned. Is the vendor or purchaser entitled to rents and profits? The vendor is entitled to the purchase money, which is not, in my view, a rent or profit. This is by hypothesis undeveloped land, and if the purchaser in possession lets it, or grows crops on it, he and not the vendor is entitled to the rents and profits. This is so as between themselves, and the vendor could not, against such third parties, sue for rent. The purchaser being in possession could bring trover or trespass for severed crops; if the vendor could sue in trespass it would be as trustee for the purchaser. It follows, in my view, that the purchaser, who is the beneficial owner, is the owner within the section. This would not always be true. A trustee who alone could sue for rents and profits would not, I think, the less be owner because he had to account to his *cestui que* trust, and I am expressing no opinion on the incidence of the tax between mortgagor and mortgagee. All I decide here is that on these particular contracts the purchaser who is in possession (though his instalments are not yet paid, and he has therefore no conveyance of legal estate) is beneficial owner in possession, not in reversion, entitled in the Courts to the rents and profits of the land by an equitable fee simple or beneficial ownership, defeasible on non-payment, but convertible into a legal fee simple on payment.

This appears to me to follow from the words used in Section 41. It was further argued on behalf of Allen that the land was not undeveloped land because he was trying to develop it, and was therefore using it as his stock in the trade of a developer. I was not impressed by this argument, which seems to me quite inconsistent with Proviso 2 (b) of Section 16, but as I decide in his favour on another ground, it is not necessary to determine it finally.

I therefore reverse the decision of the Referee, and decide that J. Allen, not being "owner" within the definition in Section 41 of the plots, the subject-matter of the appeal at the time of the assessment, was not liable at that time to pay undeveloped land duty in respect of those plots.

He must have the costs of the proceedings.

Leave to appeal was granted.—(*The Land Union Reports of Appeals*, vol. 2, p. 143.)

For the appellant: E. P. Hewitt, K.C., and William Allen.

For the Commissioners: The Solicitor-General and W. Finlay.

[Judgment confirmed by Court of Appeal, February 2, 1914.]

[KING'S BENCH DIVISION.]

INLAND REVENUE COMMISSIONERS *v.* DUKE OF
DEVONSHIRE.

[DECEMBER 10TH, 11TH, AND 17TH, 1913.]

*Revenue—Undeveloped Land Duty—Meaning of Dwelling-House—
Extent of Land Developed by Erection of House—Exemption
of One Acre—Interpretation—Finance (1909-10) Act, 1910
(10 Edw. VII., c. 8), ss. 16 (2) & 17 (4).*

The word "dwelling-house" in Sections 16 (2) and 17 (4) of the Finance (1909-10) Act, 1910, means "house, outbuildings, curtilage, and "the open spaces included therein other than gardens or pleasure grounds."

The site of a house, together with such an amount of adjoining land as is essential to its use as a dwelling-house by the class of persons who might, from the business point of view of a person dealing in houses, be expected to live in it, is "developed" by the erection of such a house within the meaning of Section 16 (2).

Section 17 (4), which exempts from undeveloped land duty "any land "not exceeding an acre in extent occupied together with a dwelling-house" gives the owner absolute protection as to an acre of land besides the site of the dwelling-house, but it does not give him the additional benefit of exemption for an acre of land beyond what is essential for the enjoyment of the house.

Mr. Justice Scrutton read the following judgment on December 17 :—

The Commissioners of Inland Revenue appeal against a decision of the Referee fixing the part of the land and gardens in which Devonshire House, Piccadilly, is situated which is liable to be assessed to undeveloped land duty at the annual rate of one-halfpenny for every 20s. of its site value. Section 16 (1) of the Finance (1909-10) Act, 1910, imposes this duty on undeveloped land. Subsection (2) provides that land shall be deemed to be undeveloped land if it has not been developed by the erection of dwelling-houses, and Section 17 (4), provides that undeveloped land duty shall not be charged on the site value of any land not exceeding an acre in extent occupied together with such a dwelling-house.

Interpreting these sections the Commissioners of Inland Revenue limited the land developed by the erection of Devonshire House to the actual land on which the house and its foundations stand. This is shown on the agreed plan put in before me surrounded by a dotted line, and its accuracy is agreed. The Commissioners allowed the Duke, in addition, one acre of land free from tax under Section 17 (4). This acre they appropriated to the courtyard in front of Devonshire House, and to an area at the back

extending to the line marked A on the agreed plan. The Referee found that such land was developed by the erection of Devonshire House as was immediately adjoining thereto and essential for its enjoyment; and he fixed this as extending from the Piccadilly front to the line marked B, rather farther back from the house than the line of the Crown, A, on the agreed plan. In addition he held that the Duke was entitled to a further acre of undeveloped land, the extent of which was shown by a line marked E on the agreed plan. Against this the Crown appealed. If the Referee was right in the construction he put on the words "developed by the erection of a dwelling-house," the Crown did not challenge the line he fixed as expressing his construction, but they did dispute that the Duke was entitled to an additional acre of exemption. At the start, however, they disputed the construction which the Referee had put on the above words, and contended that the developed land was limited to the site actually occupied by the buildings as enclosed by the dotted line on the plan without such yards or forecourts as might be included in a curtilage. The respondent adopted the construction of the Referee, and did not dispute his finding of fact on the construction that he adopted.

The questions thus raised are of great importance in the case of all houses occupied with more than an acre of land, especially of all large houses. The first question seems to me to be the meaning of the word "dwelling-house" in Section 16 (2) and Section 17 (4). The Crown contended that it was limited to the actual buildings of the house and the foundations on which they stood. The plan produced showed by the dotted line their application of this principle to Devonshire House. They admitted as a possible wider meaning the house and curtilage, including courtyards or stable yards, enclosed quadrangles, and approaches. The respondent contended that, just as in many cases under wills, deeds, or the Lands Clauses Acts, a house included outbuildings, curtilage, or courtyard and gardens immediately annexed to and usually occupied with it, so the word "dwelling-house" had the same meaning here, and that the curtilage and gardens occupied with Devonshire House for nearly two hundred years were "the dwelling-house." It seemed, however, clear that in the second prohibition of charge in Section 17 (4) the word "dwelling-house" was not used in the sense contended for either by the respondent or by the Crown. In that prohibition the annual value under Schedule A was split up into "the dwelling-house" and "the gardens and pleasure grounds." The curtilage and yards and similar open spaces therein were clearly not "garden and pleasure grounds," and must therefore be "dwelling-house," which in that prohibition I take therefore to mean house, outbuildings, and curtilage. The first prohibition in that subsection distinguishes a dwelling-house from land occupied with it. It is improbable that the word is used in a different sense in Sections 16 and 17, and I construe the word "dwelling-house" as "house, outbuildings, curtilage, and the open spaces included therein other than gardens or pleasure grounds."

I have next to apply this definition to the actual facts. To help me to understand the agreed plans I had a view of Devonshire House. The main body of the present house, erected about 1733, stands between

Berkeley Street and Stratton Street, Piccadilly, named after Lord Berkeley of Stratton, which were carved out of the gardens of Berkeley House, the predecessor of Devonshire House, under the advice of John Evelyn. When in 1913, under an Act of 1910, a question is raised whether the present gardens of Devonshire House are developed by the present building, it is not without interest to read in John Evelyn's Diary, under date June 12, 1684 :—

" 12th June. I went to advise and give directions about the building two streets in Berkeley Gardens (that is Berkeley Street and Stratton Street) reserving the house and as much of the garden as the breadth of the house. In the meantime I could not but deplore that sweet place (by far the most noble gardens, courts, and accommodations, stately porticoes, &c., anywhere about the town) should be so much straitened and turned into tenements. But that magnificent pile and gardens contiguous to it, built by the late Lord Chancellor Clarendon, being all demolished and designed for piazzas and buildings, was some excuse for my Lady Berkeley's resolution of letting out her ground also for so excessive a price as was offered, advancing near £1,000 per annum in mere ground-rents ; to such a mad intemperance was the age come of building about a city, by far too disproportionate already to the nation ; I have in my time seen it almost as large again as it was within my memory."

What John Evelyn, who condemned the mad intemperance of £1,000 a year on ground rents for the gardens given up to make Berkeley and Stratton Streets, would have said to the present valuation of the land of the present gardens without buildings at £400,000, it is not easy to conjecture. The main building still, as in Evelyn's new plan, the breadth of the garden, has two low wings running forward to Piccadilly. Between their extremities a wall with gates forms the Piccadilly boundary, and encloses a courtyard, partly paved, partly gravel, and on one side are stables, and part of the courtyard is used for standing and cleaning carriages. Several rooms get all their light from the courtyard, and it contains both the principal and the servants' and tradesmen's entrances. On the Berkeley Street side of the house and wing, within the agreed site of the "house," are two small stone-paved yards open to the sky, and on the Stratton Street side behind the house is an open space with a small grass lawn, partly enclosed, which is agreed as part of the house, but which, but for the agreement, I should have considered not as a house but as "curtilage."

The Commissioners, limiting "dwelling-house" to actual buildings, included the front courtyard in the free acre under Section 17 (4). The Referee and the respondents treated the courtyard as part of the house. Treating the "house" as I do as including the curtilage, I find that the courtyard is "curtilage," and not taxable. The same result is also arrived at by treating it as essential to the enjoyment of the house, which is the Referee's view.

The next question is, What extent of land is under Section 16 "developed" by the erection of the dwelling-house? The Commissioners say, "Only the actual land occupied by the house." The Referee and the respondents say, "Such other land adjoining as is essential to its enjoyment as a house," a question of fact in each case. The other part of

Section 16 does not give much help here, for the question how much land is developed by the erection of buildings for trade will rarely become practical, as land adjoining trade buildings though not occupied by them is not taxed if used for trade, as it generally will be. The object of the undeveloped land duty appears to be in the case of land worth over £50 an acre, which has a higher value for building or trade purposes than it has for agriculture, to impose a tax on such excess value, one of the purposes of the Legislature, as I gather from the statute, being to force such land into the market for trade or building of houses. This is said to "develop" the land—meaning, I suppose, to bring out its latent capabilities, one of the meanings of the word "develop" given in the *Oxford Dictionary*. What happens if you erect a dwelling-house on land? That it may be an effective dwelling-house some more land than it actually covers is clearly necessary. You cannot build right up to its front or back door, depriving it of access, or up to its windows, depriving it of light and air. A certain space must be allowed between it and other buildings, and you cannot build over its drains; the notion of a dwelling-house on land involves the notion of vacant land round it essential to its effectiveness. And, further, as houses are built to sell or let or live in, I think it involves so much land as would ordinarily be expected to go with a house of that size, if it is to be merchantable or habitable, and in the language of the Act not to become "derelict." I should express the Referee's view "essential to its enjoyment" as "essential to its use as a dwelling-house by the class of persons who might, from the business point of view of a person dealing in houses, be expected to live in it"; and I regard the site of the house together with such an amount of adjoining land as complies with that definition as "developed" by the erection of such a house.

Again applying this definition to the facts, the Referee applying such a principle fixed line B on the agreed plan as showing the amount of land at the back of the house, which he considered essential to its enjoyment and therefore "developed." If his principle of construction was correct, neither side objected to his application of it, and after viewing the premises I see no reason to differ from it. Then there arose a further question of construction of great general importance. The Referee has, in addition to line B on the agreed plan, allowed the Duke another acre of land up to line E, conceiving himself bound to do so by Section 17 (4), "Undeveloped land duty shall not be charged on the site value of any land not exceeding an acre in extent occupied together with a dwelling-house." The respondents contend that he was right, for they say Section 17 is all exemptions. You do not exempt developed land, but undeveloped land. The land essential for enjoyment is developed land; therefore the acre exempted by Section 17 (4) must be given from the undeveloped land beyond. The Commissioners reply that Section 17 is not entirely an exemption section, but the nature of the tax on undeveloped land has to be gathered from Sections 16 and 17, neither of which contains a full definition. That it is on land not developed by building or trade comes from Section 16; that it is on the excess of trade value over agricultural value, and only where the higher value is over £50 an acre, comes from Section 17. The respondents' view of the amount of land developed may

also raise difficult questions, and, say the Commissioners, perhaps to avoid these that Subsection (4) provided in effect that an acre occupied together with a dwelling-house shall always be free, whether it is developed or undeveloped land. This avoids troublesome questions of the exact amount of land essential to enjoyment by always giving the subject one acre of land besides the site of his house, while it does not prevent him, if more land than an acre is essential to the enjoyment of the house, from getting the benefit of it. For the excess over an acre will be developed land, and not liable to the tax. And, say the Commissioners, if he has got protection for all land essential to the enjoyment of the house, there was no need to give him an acre more than was essential for the enjoyment of his house.

I have come to the conclusion that the contention of the Commissioners on this point is right, and the decision of the Referee wrong. Subsection (4) distinguishes between the house (including curtilage) and the land occupied with it, and is not dealing with developed or undeveloped land. It avoids in many cases disputes as to the latter division by giving the owner absolute protection as to an acre of land occupied, which may be more than the land developed. But it does not stop him from proving that more than an acre is developed land, in which case the excess of developed land over an acre will pay no tax, as well as the acre free from tax, both under Subsection (4) and because it is developed. While it protects him in this respect, it does not, in my view, give him the additional benefit, for which I see no reason, of exemption for an acre of land beyond what is essential for the enjoyment of his house in the meaning already explained.

I have lastly to apply this to the facts of the case. Devonshire House with its curtilage occupies the land from Piccadilly to the agreed dotted line bounding the house at the back, and is not the subject of undeveloped land duty. There is essential to its enjoyment, and therefore developed by its erection, the land at the back of the house up to line B. This being land developed is not taxable. But the subject is entitled to one acre of land occupied with his house (which I have defined as house and curtilage) free of this tax. He is therefore entitled, free of tax, to one acre running backwards from the dotted line bounding the house at the back. I understood this to be agreed as line C. If there is any point in the exact position of this line on which the parties cannot agree, the Referee or myself can settle it. Part of this acre is already free as developed land, but the balance is given under Section 17 (4). I think the construction of the Referee which gives the acre from line B to line E is, for the reasons already given, erroneous.

My decision, therefore, is that the hereditament from its Piccadilly front to line C on the agreed plan is free from undeveloped land duty for the reasons given in my judgment. The rest of the hereditament is chargeable. The figures, if not agreed, can be brought before me. As each side has partly failed, in its contentions, I order each party to pay his own costs here and below.—(30 T. L. R., 209.)

[KING'S BENCH DIVISION.]

THE EXECUTORS OF THOMAS WAITE v. THE COMMISSIONERS OF INLAND REVENUE.

[DECEMBER 11TH, 12TH, 15TH, AND 17TH, 1913.]

Provisional Valuation—Agricultural Land—Site Value Deductions—Sea Walls—Buildings—Structures Appurtenant to or Used in Connection with Buildings—Finance (1909-10) Act, 1910, s. 25.

This was an appeal against the site value found by the Referee in his award. There was no appeal against the gross and total values so found. The main dispute was on the question whether certain sea walls and dykes should be divested in order to arrive at the site value. Evidence as to site value was given by C. P. Hall, H. Trustram Eve, and B. Simons for the appellants; and by C. Gerald Eve and H. M. Jonas for the respondents. Mr. Justice Scrutton dismissed the appeal.

JUDGMENT.

Mr. Justice Scrutton: The executors of Waite deceased, the owners of a farm in the parish of Wrangle, near Boston, in South Lincolnshire, appeal against a decision of the Referee on a provisional valuation under the Finance Act, 1910. This decision fixes the gross value at £6,015, and the total value at £6,000, and is not in this respect appealed against. It then fixes the full site value at £5,295, deducting in effect £705 from the total value for the value of buildings, &c., divested from the land to obtain such full site value. The Referee states that he has made no deduction in respect of the two sea walls or banks, or of dykes, under either Sections 25 (2) or 25 (4) (b), and sequel to (e) of the Finance Act, 1910. This failure to take the sea walls and dykes into consideration is the principal matter appealed against, though the appellants also object to the full site value on the ground that the Referee has not made a sufficient allowance for the value of the buildings, trees, and hedges divested.

I heard evidence as to the nature of the holding, and it was agreed that on general questions I might refer to any statement in the second edition of Wheeler's *History of the Fens in South Lincolnshire*. As appears from the diagram opposite page 455 of Wheeler, but for artificial works large portions of South Lincolnshire would be under water at spring tides, each high water. This is due partly to the fact that these lands are marshes over which the sea used to flow; partly to the fact that when these marshes were drained the soil, especially the peat, has been gradually solidified and sinking. The principal defence against the sea was formerly the "Roman Bank," a turf-covered bank with sloping sides, some fifty miles long, which extends round the shores of the Wash from Wainfleet to King's Lynn. Its course will be seen from the map facing page 1 of Wheeler, or in the neighbourhood of Wrangle from the map at page 197, Wheeler. Its origin is probably Roman. It is repaired by the

Commissioners of Sewers at the expense of the owners of land contained by it. It protects a very considerable area, as appears from the fact that some 363,000 acres of Lincolnshire are below the level of the high-water spring tides, 85,000 acres averaging $7\frac{1}{2}$ feet below this level. This bank runs across the property in question here; its course and height appear from the plan annexed to the petition, and photographs 1 and 2 show its general character. If it were absent, and there were no other defence, nearly the whole of the land in question would be under water at spring tides; the farm buildings would be just above the highest tides, on a kind of island knoll.

But there are other defences. Outside the Roman Bank accretion has taken place at rates varying in different places. As the accretions have solidified, further enclosures have taken place with their respective sea walls, until, in the south of the Wash, the Roman Bank is some four miles inland. At Wrangle a further enclosure has taken place in 1808 by a bank called the Adventurer's Bank, the south end of which joins the Roman Bank on this hereditament, as shown in paragraph 7, the northern end being in Friskney Parish. This bank is repaired by its frontagers under some kind of agreement; it is about a foot higher than the present height of the Roman Bank. This bank is the only protection to part of the appellants' land, and, together with the Roman Bank, protects the rest of the land. Further, an elaborate system of open dykes drains the appellants' land, and about a thousand acres of the land of others, discharging through a sluice in the Adventurer's Bank, which sluice, however, is not situate on the appellants' land. Whether the Roman Bank and the Adventurer's sea wall are to be treated as divested in arriving at the divested value of the land depends on the construction to be put on Section 25, Subsections (2) and (4) (b) and (c), and its sequel of the Finance Act, 1910. The definition of full site value in Subsection (2) is complicated; but, as it is an algebraic truth that $a - (a - b) = b$, if a is gross value and b is divested value, full site value, which equals $a - (a - b)$ is equivalent to divested value. I use this phrase shortly to convey "the value which the fee simple of the land, if sold at the time in the open market by a willing seller, might be expected to realise if the land were divested of any buildings and of any other structures (including fixed or attached machinery), on, in, or under the surface, which are appurtenant to, or used in connection with, any such buildings, and of all growing timber, fruit trees, fruit bushes, and other things growing thereon." The questions then are: Are the Roman Bank or the Adventurer's Bank, in the words of this subsection, (1) buildings, (2) any other structures which are used in connection with buildings, on, in, or under the surface of the land in question? I omit the words "appurtenant to," as Mr. Danckwerts did not contend that the walls or dykes were appurtenant to the farm buildings. The use of the word "structures" probably narrows a little the word "buildings," but I do not think anyone would describe the turf-covered mounds I saw on the photograph as "buildings." I doubt whether they are "structures," though it may be that a thing that was artificially made one hundred years ago, and is still kept in repair, may be described as a structure. I do not think an ordinary

lawn would be so described, even if it were artificially made undulating. But, assuming the walls are "structures," and assuming they are "used" (which I doubt, for I do not think you "use" a mound which shelters you from the sun or wind), are they "used in connection with the farm buildings?" They would fulfil the same functions if there were no buildings at all on the farm; they fulfil the same functions to many square miles of land not part of this holding. The farm buildings here are, in fact, just above extraordinary spring high-water level. If the walls are used in connection with anything, it is in connection with the land which they protect, which is not specially this land, but includes a large portion of Lincolnshire. This may be illustrated by considering the adjoining Fen country. Large portions of it depend for habitability on the maintenance of the great system of drainage known as the Bedford Level and its tributaries. It may be that part of this system is on private land. Could it be said to be used in connection with a house on the land so that it must be divested to arrive at the full site value of the land? I think not, and I cannot bring myself to believe that the walls can be spoken of as in any direct sense "used in connection with the farm buildings." It follows that they are not to be divested in order to arrive at full site value.

With regard to the dykes, I think, first, that they are neither "buildings" nor "structures." A trench in the earth is not, in my opinion, a structure in any ordinary sense of the term. If they are structures I think they are not used in connection with the dwelling-house. They are part of a large system which drains nearly 1,000 acres, and has its outlet in other land. They are used in connection with land, and not more with this than with any other land in the system. Mr. Danckwerts said (1) that they stopped the land round the buildings from being waterlogged; (2) that when filled with salt water they raised the level of fresh water in the well which the house used. Both these matters are, I think, much too remote to suppose that Parliament covered them by the words used in Subsection (2). I hold, therefore, that the dykes are not to be divested in arriving at full site value.

It is then said, if not divested under Subsection (2), the walls and dykes are to be taken into account under Subsection (4) (b), as modified by the part of the subsection following (e). As to Subsection (4) (b), I hold the qualification or limitation beginning "*incurred bona fide*," &c., applies both to works executed and expenditure incurred. This seems clear on considering the words at the beginning of that part of the subsection following (e). If so, if the walls or dykes were made by, or on behalf of, or for the sole benefit of, any person interested in this land, which is not true of the Roman wall, at any rate they were not made for the purpose of improving the land as building land. But it is said, if executed to improve the value of the land for agriculture, they have actually improved the value of the land as building land, because it is possible now to erect a building on dry land, and not on the marsh. This is true, but it is a very different thing from "actually improving the land as building land." No one would consider this land, 7 miles from a station and 12 from a market town, as building land, or give anything for it on a building lease if he was compelled to build on it. Agricultural farm buildings may be

built upon it, but that, in my view, does not make it building land, land used for residential buildings instead of for agriculture. If the walls and dykes do not come under Subsection (2), the expense of divesting them cannot be deducted under Subsection (e), the last lines of which are curiously inappropriate to this case.

In my opinion, therefore, the Referee was right in declining to fix full site value on the basis that the land was divested of the two sea walls and the dykes.

Some evidence was given before me on a minor point, which raises no question of principle, namely, whether the Referee has correctly fixed the full site value, having regard to the buildings, trees, and hedges which had to be treated as divested. It would be sufficient for me to say that, having considered the evidence on both sides, the appellant has not satisfied me that the decision of the very experienced Referee who saw the land was wrong. But I can go further, and say that I am satisfied by the evidence that his decision was correct. I only have to add, as it was agreed by both sides that I should, that if the fences have any agricultural value, either for shelter or for agricultural divisions, or for any other purpose, the Referee should consider the effect of their absence in estimating the full site value without them. This is true of trees, or of any other feature divested, and I have no reason to believe that the Referee who saw the land did not act on this principle.

The appeal must be dismissed, with costs here and below. I give leave to appeal only on the question whether the sea walls and dykes should be treated as divested in arriving at full site value.—(*The Land Union Reports of Appeals*, vol. 2, p. 161.)

For the appellants : Danckwerts, K.C., and W. Allen, instructed by Lewin, Gregory & Anderson.

For the respondents : The Solicitor-General and W. Finlay, instructed by the Solicitor of Inland Revenue.

[Appeal pending.]

[KING'S BENCH DIVISION.]

THE COMMISSIONERS OF INLAND REVENUE v. CLAY
AND OTHERS.

THE COMMISSIONERS OF INLAND REVENUE v.
MRS. BUCHANAN AND OTHERS.

[DECEMBER 13TH, 1913.]

Provisional Valuation—Gross Value—Valuation on Occasion—Increment Value Duty—Site Value—Finance (1909-10) Act, 1910, s. 25.

JUDGMENT.

Mr. Justice Scrutton : The Commissioners of Inland Revenue appeal against two decisions of a Referee in respect of No. 83, Durnford Street,

Stonehouse. In the first (Clay's case), on January 24, 1911, a provisional valuation was made of the land in question as on April 30, 1909, giving original gross value £750, assessable site value £190. Clay and others appealed, and the Referee has altered these figures to £1,000 and £200 respectively.

In the second (Buchanan's) case, the Commissioners on February 21, 1911, provisionally determined the site value on the occasion of a sale of the premises by Mrs. Buchanan to Clay and others, trustees of a Nursing Home adjoining, for £1,000, on September 29, 1910. Deducting £560 (£750 minus £190) as above, they obtained £440 as assessable site value. The next step would have been an assessment of increment duty on the difference between £440 and £190, with proper deductions, following Lumsden's case ([1913], 3 K. B., 809), when Mrs. Buchanan appealed to the Referee, who deducted from £1,000 the consideration, £800 (£1,000 less £200), instead of £560 as above, leaving practically the same assessable site value as before, and no increment duty payable. The Commissioners appealed against both decisions of the Referee. In Buchanan's case counsel for the subject took the preliminary objection that no appeal lay, as increment value duty had not yet been formally assessed; the determination of assessable site value by the Commissioners was merely incidental, and though they had consented to an appeal to the Referee on this point, as no appeal lay of right, the Referee was merely acting as an arbitrator by consent, and there was no appeal from his finding. What exactly happened was this: On February 21, 1911, the Commissioners had sent provisional particulars of site value with a request for any objections. On April 5 the subject's solicitor objected, and asked for a deduction of £800. On September 14, 1911, the subject's valuer asked for a formal decision so that the subject might appeal to the Referee. On September 29 the Commissioners wrote that the normal method would be to appeal against the assessment of increment value duty, but that so that the two appeals might come on together they would not raise objection to an appeal against the site value on the occasion, "which they have determined, as already notified to her, at £440." They had not in fact notified their final determination, but this letter was treated as a determination by both parties. On a notice of appeal against assessment of increment duty being given, the Commissioners pointed out on November 2, 1911, that it should be against the determination of the Commissioners of the site value on the occasion of the sale. Such a notice was then given, and the matter came before the Referee in the ordinary way. If he had decided against the subject, I think I should have heard bitter complaints from the subject if it had been suggested there was no appeal. But it seems to me clear that the Commissioners' determination was either "a subsequent determination of the site value of any land," or "the determination of any other matter which the Commissioners are to determine under this part of this Act," under Section 33, for the Commissioners had, before they assessed increment duty, to determine the site value on the occasion in accordance with Section 2; and the appeal was against that determination. The objection seems without merits, and fails. On the merits, I listened for nearly a day to the evidence of valuers and others. There is nothing in the Act

expressly treating an appeal as a re-hearing, or requiring the Judge to whom the appeal comes to hear the evidence all over again. Section 33 (4) gives an appeal to the High Court "in the manner" directed by Rules of Court, and Rule 7 provides "unless by consent or otherwise ordered, only "oral evidence shall be admitted at the hearing." It is said that this rule requires me to re-hear every appeal on oral evidence, and I am told that the last two Revenue Judges did hear one or two cases in this way. In my view this matter may require very serious consideration, if appeals on facts are as numerous as I am led to expect, and my hearing oral evidence in this case must not be taken as binding me, or other Revenue Judges, to such a course in future.

After listening to the evidence I find the following facts: (1) No. 83, Durnford Street was an old well-built house, needing some expenditure on the roof, but otherwise in good repair, and could not be rebuilt for less than £1,200. (2) In view of the declining prosperity of the neighbourhood, and the nature of the accommodation in the house to people who wanted to use No. 83 as a private residence, having regard to the other houses offering, it was not worth more than £750, which was the utmost such people could be expected to give. The owner had bought it in 1902 for £700. (3) To the Nursing Home, which owned the neighbouring house and needed further accommodation near, No. 83 was so adjacent and offered such suitable accommodation that it would be advantageous to them to pay at least £1,000, probably more, for it; and the £1,000 actually paid was a profitable business transaction to the Nursing Home, and not a fancy price. It was not worth anyone else's while to pay a sum substantially larger than £750 except in the hope of reselling to the Nurses' Home, to which the house was obviously of considerable value, and a likely subject of purchase.

These findings raise the important question of principle in dispute between the parties. The Crown contends that in estimating the gross value of land under Section 25 (1) of the Act I must exclude the price which one particular buyer will give because of his particular need, that this is not the price in "the open market"; and that the willing seller must be willing to sell at a market price, not a fancy price. The Solicitor-General relied on the course of authorities summarised by Lord Moulton in his judgment in *Lucas v. Chesterfield Gas and Water Board* ([1909], 1 K. B., 35), that in assessing compensation under the Lands Clauses Act for compulsory purchase, you cannot consider the special need of the compulsory purchaser; the existence of the scheme cannot enhance the value of the lands to be purchased under it. This is true, but it is also true that if there are other possible purchasers besides the compulsory purchaser, even in such a case the competition of special needs may be taken into account in fixing the compensation to the vendor. I do not, however, think the decisions on compensation for compulsory purchase help me on this Act. Under the Lands Clauses Act, speaking generally, the owner who loses his land or sustains damage is to have the value to him, not merely the market value, or the value to the promoters. Under this Act one is to estimate the price which the fee simple would realise "sold in the open market by a willing seller." The seller is not to

be assumed to be making a forced sale at any price he can get, however low. He must be willing to sell, not demanding compensation for a forced sale, but he is not required to exclude the principal bidder from his market, because that principal bidder wants the house more than anyone else, and will therefore give more for it. The Solicitor-General admitted that if No. 82 was taken by a Nursing Home, the competition between the owners of No. 82 and No. 84 for No. 83 might be taken into account; but he said that the offers of the owner of No. 84 alone, though based on real necessity, and advantageous to him as the owner of No. 84, must be excluded from the "open market" to be considered. I am unable to follow this reasoning. If the owner of No. 83 had said to an expert, "I wish to sell, but am not forced to, and can wait and negotiate; my house is worth £750 to private owners to live in, but my next neighbour desires to extend his premises, and my house is so convenient and well built that it will pay him to go up to £1,200 rather than build elsewhere, what do you think I can realise by a sale?" I think such an expert would have answered, "Well, it depends on diplomacy in bargaining, but I should think you could be sure of selling for at least £1,000, and if you refuse to sell except at your price you can very likely get more." I exclude the last hypothesis of refusal, as I do not think the vendor would then be a "willing seller at the time," but I see nothing in the Act to require me to exclude the first hypothesis, which seems to me the obvious business way to look at the transaction. In other words, I cannot exclude from the "open market" the principal buyer, though for a genuine business reason he will pay a price higher than others.

The Solicitor-General also contended that the view of the Master of the Rolls in *Lumsden's case* ([1913], 3 K. B., 818)—"The actual price paid may be either greater or less than would have been reasonably expected"—prevented the Referee from taking into account the actual price. In *Lumsden's case* the gross value on the occasion was found by the Referee without appeal to be less than the price on occasion, and obviously when a particular price might be expected, a good sale above it or a bad sale below it may be made without impugning the reasonable expectation of that price. But in my view here anyone knowing the facts beforehand would anticipate that £1,000 might be obtained, if the owner was willing to sell, from the Nursing Home, who wanted the house for a particular purpose, though not from other people who wanted it for a different purpose. In my view, therefore, the Referee was right in fixing £1,000 as the gross value of 83, Durnford Street, both in April, 1909, when the Nursing Home having offered Mrs. Buchanan £850, and having been refused, were enlarging No. 84, and in September, 1910, when they bought No. 83 for £1,000. He was right in this, not because of the sale for £1,000, but because of the reasonable expectation that a willing seller could get £1,000 or more from the Nursing Home. Referees in assessing gross value on the occasion of sales are not bound by the actual consideration figure, which may be a misunderstanding of market value without business foundation, but where they find a sale influenced by the business wants of the buyer and a profitable transaction to him I think they are justified in considering

it, though no other buyer would give such a price except to resell to the one special client.

I am doubtful whether the Referee has not fixed each assessable site value too low, as I think the bare site had a higher value to the Nursing Home, owing to its contiguity and suitability to their enterprise, than it would have to other buyers ; and I should not have been surprised if the Referee had fixed £250 as assessable site value on each occasion ; but I do not propose to interfere with his figure of £200.

The appeals must be dismissed, with costs.—(*The Land Union Reports of Appeals*, vol. 2, 150.)

For the appellants : The Solicitor-General and W. Finlay, instructed by the Solicitor of Inland Revenue.

For the respondents : Danckwerts, K.C., and W. Allen, instructed by Lewin, Gregory & Anderson.

[Appeals pending.]

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THE FINANCE (1909-10) ACT, 1910, PART I.

REPORTS OF APPEALS HEARD BY REFEREES

SPECIALLY PREPARED FOR

*The Surveyors' Institution, the Auctioneers' and Estate Agents' Institute,
the Land Agents' Society, and the Central Land Association*

BY

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TOGETHER WITH

REFERENCES TO DECISIONS OF THE COURTS OF
LAW UNDER PART I. OF THAT STATUTE.

PART 5.

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THE FINANCE (1909-10) ACT, 1910.

PART I.

REPORTS

OF

APPEALS HEARD BY REFEREES.

Before THOMAS BINNIE, ESQ., *Referee*, 24th November, 1913.

JOHN MILLER AND OTHERS *v.* THE COMMISSIONERS OF INLAND
REVENUE.

INCREMENT VALUE DUTY—GROUND PURCHASED BY A LOCAL
AUTHORITY FOR PUBLIC HEALTH PURPOSES—CONVEYANCE
EXEMPTED FROM STAMP DUTY UNDER PUBLIC HEALTH (SCOT-
LAND) ACT, 1897 (60 & 61 VICT., c. 38), s. 168—INCREMENT
VALUE DUTY A STAMP DUTY—FINANCE (1909-10) ACT, 1910
(10 EDW. VII., c. 8) ss. 3 (6), 10 (2), & 42 (4).

A conveyance to a local authority under the Public Health (Scotland)
Act, 1897, being exempt from all stamp duties, is exempt from increment
value duty.

The appellants were the owners of a property in School Wynd,
Glasgow, which they sold and conveyed to the corporation of Glasgow by
disposition recorded in the General Register of Sasines, on February 20,
1913. The property was acquired by the corporation in order that it might
be converted into an open space to be used as a children's playground, and
in the conveyance to them they were described as "the Corporation of the
"City of Glasgow acting under the Glasgow Police Acts, 1866 to 1912, in
"the execution of the Public Health (Scotland) Act, 1897."

The original assessable site value was agreed at £766, and the site
value on the occasion of the sale was agreed at £2,359, showing an incre-
ment of £1,593, on which (after allowance of the 10 per cent. deduction)
the appellants were assessed to increment value duty in the sum of £303.
The appellants admitted that if they were liable to pay the duty, the
amount had been correctly calculated at £303 ; but they denied that the

duty was exigible on the ground that increment value duty was a stamp duty, and the conveyance to the corporation, being a conveyance to a local authority under the Public Health (Scotland) Act, 1897, was exempt from all stamp duties.

The relevant sections of the Glasgow Police Acts, 1866 to 1912, are (1) the Glasgow Corporation (Police) Order Confirmation Act, 1901 (1 Edw. VII., c. 163), Section 18, which provides: "The corporation acting "as the local authority under the Public Health (Scotland) Act 1897 may "provide by purchase . . . ground or premises for public recreation . . . "and the powers of borrowing money and levying assessments in that "Act contained shall be applicable to the purposes of this section," and (2) the Glasgow Corporation Act, 1909 (9 Edw. VII., c. 137), Section 46, which provides that "All bonds assignments conveyances . . . or other "writings made or granted for public health sewage or waterworks "purposes by or to or in favour of the corporation under or in virtue of "the Loans Acts Police Acts Sewage Acts and the Water Acts shall " . . . be deemed to have been made or granted under the Public Health " (Scotland) Act 1897."

The Public Health (Scotland) Act, 1897, Section 168, enacts: "All bonds "assignments conveyances . . . or other writings made or granted by "or to or in favour of the local authority under this Act shall be exempt "from all stamp duties."

The Finance (1909-10) Act, 1910, Section 3 (6) enacts: "Increment "value duty shall be a stamp duty collected and recovered in accordance "with the provisions of this Act."

Counsel for the appellants maintained that the property sold by the appellants had been acquired by the corporation for a children's playground under the powers conferred by Section 18 of the Glasgow Corporation (Police) Order Confirmation Act, 1901, and the conveyance was thereby, and also by Section 46 (above quoted) of the Glasgow Corporation Act, 1909, brought within the scope of Section 168 of the Public Health (Scotland) Act, 1897, under which conveyances granted in favour of the local authority under that Act were exempt from all stamp duties. By Section 3 (6) of the Finance Act, 1910, increment value duty was declared to be a stamp duty, and consequently the conveyance in question was exempt from it.

Mr. Watson, for the Commissioners, said that as the appellants were founding upon an exemption, the onus was upon them to show that they came within the exemption. (*Chanter v. Dickinson* [1843], 5 M. & G., 253, *per* Tindal, C.J., at p. 260; *Yevens v. Noakes* [1880], 6 Q. B. D., 530; 44 L. T., 128, *per* Bramwell, L.J.) Unless the property was acquired in the terms of and for the purposes of the Public Health (Scotland) Act, there was no exemption. That Act conferred no power on local authorities to acquire open spaces, and although such acquisition might be conducive to public health, it was not a public health purpose within the meaning of that Act. Section 18 of the Glasgow Act of 1901 merely incorporated the powers of the Public Health Act for the purposes of administration, assessment, and borrowing. It designated the corporation as the authority to administer that Act, but did not say that if they

acquired property under that Act they were acquiring it under the Public Health Act. Section 46 of the Glasgow Act of 1909 merely applied to conveyances, &c. which were for public health purposes within the limits of the Public Health Act, and not to the unlimited number of public health purposes not included in that Act. The scope and purpose of the Act must be taken into consideration in construing an exemption in a general statute, which is not a taxing statute. (*Attorney-General v. Gilpin*, L. R., 6 Exch., 193, *per Kelly*, C.B.; *Attorney-General v. Phillips*, 24 L. T., 832, *per Kelly*, C.B.) The property was acquired under the Glasgow Police Acts and not under the Public Health Act.

Mr. Watson further argued that increment value duty was not a stamp duty in the sense of Section 168 of the Public Health Act. It was not a stamp duty upon a conveyance, but a stamp duty paid by the transferor or otherwise upon the property. He referred to Dowell's *History and Explanation of Stamp Duties* (Longmans, Green & Co., 1873), and contended that increment value duty was merely a stamp duty for the purpose of collection and recovery. It was collected as a debt due to the Crown, and not as a stamp duty at all. The obvious purpose of Section 4 of the 1910 Act was not to put a stamp upon an instrument as a duty, but to put on a denoting stamp. It was intended that the Commissioners should have a compulsitor upon a seller to give them proof of a transaction which came within the scope of the Act. Under Section 4 (3) (c) of the 1910 Act you put a stamp denoting that no increment value duty was payable. How could a stamp indicating that no duty was due be a stamp duty? The matter was concluded against the appellants by Section 42 (4), which provided that in Scotland it was unnecessary to have a stamp of any kind with regard to increment value duty.

On the question of costs Mr. Watson referred to the Exchequer Court (Scotland) Act, 1856 (19 & 20 Vict., c. 56), Section 24, in support of the proposition that the Crown should be dealt with in the same way as a subject in the matter of costs.

Mr. King, in reply, maintained that taxing statutes were always interpreted strictly in favour of the liberty of the subject, and the onus was not upon him to show that he came within the exemption, but upon the Inland Revenue to show that he came within the scope of the statute. (*Tenant v. Smith* [1892], A. C., 150; *Cox v. Rabbits* [1879], 3 A. C. (pt. 1), 473; *Warrington v. Fulbor* [1807], 8 East, 242, *per Lord Ellenborough*, at p. 244.) In the conveyance itself the corporation were described as acting under the Police Acts in the execution of the Public Health Act. Section 3 (6) of the 1910 Act did not say that increment value duty was to be collected as a stamp duty; but declared that it was a stamp duty. Section 10 (2) provided that neither the Crown Lands Act, 1829, nor the Post Office Act, 1908, nor any other enactment exempting from stamp duty any document made or executed on behalf of the Crown or any Government department should apply so as to prevent increment value duty being collected. If it had been intended that the Public Health (Scotland) Act also should not operate to prevent increment value duty being collected, the Legislature would have so enacted.

Mr. Watson, in reply, referred to the following additional cases relating

to the interpretation of statutes: *Attorney-General v. Carlton Bank* [1899], 2 Q. B., 158, *per Russell*, C. J.; *Attorney-General v. Ross* [1909], 2 I. R., 246; *Rein v. Lane* [1867], L. R., 2 Q. B., 144; 15 L. T., 466; *Inland Revenue v. Free Church of Scotland* 1897, 24 R., 496, *per Lord McLaren*, at p. 499; *Herbert's Trustees v. Inland Revenue* 1913, S. C. (H. L.), 34, [1913] A. C., 826.

The Referee issued his award on February 28, 1914, in the form of a stated case. After narrating the facts and giving a summary of the arguments, he proceeds as follows:—

“On the whole facts and contentions I find (first) that the conveyance
“by the appellants to the Corporation of the City of Glasgow comes within
“the provisions of Section 168 of the Public Health (Scotland) Act, 1897,
“and the exemption from stamp duties therein conferred, and (second)
“that increment value duty is a stamp duty. I therefore decide that no
“increment value duty is exigible from the appellants on the occasion of
“the transfer on sale of the property referred to in their notice of appeal.
“I find the appellants, John Miller and others, entitled to their expenses
“in this appeal, allow them to lodge an account thereof with the auditor
“of the Court of Session, and remit the same to the said auditor for
“taxation and report.

“If the Court determine that I am wrong in sustaining the contention
“in law advanced on behalf of the appellants, and that either of the con-
“tentions in law advanced on behalf of the Commissioners is correct, then
“I decide that the appellants have been properly assessed to increment
“value duty on the occasion of the said transfer in the sum of three
“hundred and three pounds; and I find no expenses due to or by either
“party.”

For the appellants: M. J. King, advocate, instructed by John Miller & Co., Glasgow.

For the respondents: H. Watson, of the Solicitor's Department, Inland Revenue.

Before DANIEL WATNEY, ESQ., Referee, 14th January, 1914.

GREAT SOUTHERN CEMETERY CREMATORIUM AND LAND COMPANY,
LIMITED, v. THE COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—LAND LICENSED FOR BURIALS—OPEN
SPACES—OPINION OF THE COMMISSIONERS—FINANCE (1909-10)
• ACT, 1910 (10 EDW. VII., c. 8), s. 17 (3).

This was an appeal against four assessments to undeveloped land duty on land, the property of the appellants, at Mitcham. At the hearing the appellants sought to object to the figures of the provisional valuations, but it was pointed out that, as no objection had been made to the provisional valuations within the time limited by the Act, the figures therein had

become settled by lapse of time, and could not, under Section 33 (1), be questioned on an appeal against an assessment of duty.

Mr. Field said that the appellants, in 1907, bought 52 acres of land, at £200 per acre, the whole of which area had been licensed as a cemetery after a Local Government Board inquiry. They claimed exemption from duty, first, under Section 17 (3) (b), on the ground that the cemetery was an open space to which the public had reasonable access; and, secondly, under Section 17 (3) (c), on the ground that the land was being kept free from buildings in pursuance of a definite scheme for the development of the area of which the land formed part, and that it was reasonably necessary in the interests of the public that the land should be so kept free. It was absolutely impossible for the appellants to build on the land under their contract of purchase; and, owing to the proximity of magazines, it could only be used for burial grounds. The appellants had had to drain the land, and had made a 14-foot approach road of a length of 1,670 feet, which they claimed was part of their development. The road had cost them between £500 and £600, and they had already spent £3,000, or £160 per acre, in developing the land. Burial grounds were a necessity, and there were not sufficient of them.

Mr. Shaw, for the respondents, said that the appellants carried on a business for the purposes of profit. The assessments appealed against concerned four pieces of land which were not part of the cemetery, but constituted reserve lands which the appellants proposed to take in, as and when required. At the time of the assessments plot 5,529 (13a. 3r. 32p.) was used as a market garden, and let on a yearly tenancy at £31 10s.; plot 5,530 (16a.) was meadow land, let in 1909 on a yearly tenancy, and at present let to a dairyman at £15 per annum; plot 4,404 (9a. 2r. 31p.), made up of $4\frac{1}{2}$ acres coppice, about 1 acre meadow, and 4 acres market garden and allotments, was all let on a yearly tenancy at £21 2s.; plot 5,531 (5a. 3r. 27p.) was meadow land, and let at £15 per annum. Of that a portion was at Christmas, 1912, taken into the cemetery, and had been since that date excluded from assessment; but the remaining portion (2a. 0r. 25p.) was still being used as before. As to 5,531, and parts of 4,404 and 5,530, the vendors, who were firework manufacturers, had prohibited the erection of buildings on them, and that had been duly taken into consideration in arriving at the figures of the provisional valuations.

The appellants did not suggest that the land was developed by the erection of houses, or used for a business, trade, or industry other than agriculture, but claimed exemption under Section 17, particularly 17 (3) (c). The last paragraph of Section 17 (3)—“The opinion of the Commissioners as to matters which are expressed to be matters for the opinion of the Commissioners under this subsection shall be final, and not subject to any appeal”—showed that the appellants could not get any relief under the subsection. The appellants had not satisfied the Commissioners that it was reasonably necessary in the interests of the public that the land should be kept in its present state. The subsection was intended to deal with building estates. The appellants could not obtain exemption under Section 17 (3) (a), because the land in question had not at present been taken into the cemetery, and the public therefore had no right of access

to it. No attempt had been made to prove to the Commissioners that expenditure had been incurred on roads or drains under Section 16 (2) (b); no claim had been made under that subsection, and it could not be raised before the Referee. He asked that the appeal should be dismissed, with costs, as it had no solid basis.

Awarded: That the land assessed for undeveloped land duty is not exempt under Part I. of the Finance (1909-10) Act, 1910, Section 17 (3) (c), or on any of the grounds set out in the notice of appeal.

That the costs of the Commissioners of Inland Revenue are to be paid by the appellants.

For the appellants: F. J. D. Field.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before H. M. COBB, ESQ., Referee, 23rd January, 1914.

F. W. DENNANT *v.* THE COMMISSIONERS OF INLAND REVENUE.

REVERSION DUTY—BENEFIT ACCRUING TO LESSOR—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 13—REVENUE ACT, 1911, s. 3 (2).

Mr. Phillips said that the appeal was against an assessment to reversion duty on the determination by merger of a lease, dated April 13, 1873, for 76 years from Christmas, 1872, of land in Church Road, Leyton. Prior to that lease the owner had granted a lease under which the lessee was to build a house, and the house was built and licensed, under the name of the "Osborne Arms." The lessee got into financial difficulties, and the lease of 1873 was granted in consideration of the surrender of the earlier lease, a premium of £300, and a rent of £16 per annum. On August 6, 1875, a lease was granted of an adjoining plot at £4, making a total rent of £20, on the same terms, the two leases to be treated as one. In 1912 Truman, Hanbury & Buxton, who had become assignees of the lease, purchased the reversion, the lease having then 36 years to run, for £450. The Commissioners thereupon estimated the total value in 1873 at £800 (*viz.*, rent £20, at 25 years' purchase, £500 + £300 premium), and the total value at determination (calculated on *barrelage*) at £3,600, and so made the benefit £2,800, on which the full duty was £280, and the duty payable, discounted under the Revenue Act, 1911, £67.

The duty was claimed on an alleged benefit which was purely artificial, ignoring the principle of the Act, which was that reversion duty was a duty on the benefit accruing to the lessor (*Marquis Camden v. Commis-*

sioners of Inland Revenue). The two total values were arrived at by two different methods, the first being arrived at without any regard to the amount of trade then done. The rent had no relation to the trade being done. The earlier surrendered lease was granted in consideration of the erection of the building, and a rent of £29, and the £300 premium was consideration to the landlord for receiving £16 instead of £29. The building was the main consideration for the original lease. With regard to the Revenue Act, 1911, Section 3 (2), 4 per cent. discount was not reasonable on trade profits and licensed property. When there were inconsistencies in an Act, one must consider the main principle of the Act. In estimating the value at the beginning of the lease one was not confined to the rent reserved and payments made, but could go outside them to show the true value if possible.

J. S. Motion said that the house would have cost about £1,000 to build. He valued the property in 1873, freehold and licensed, at £3,500. He agreed that the present total value was £3,600, based on the trade done; apart from the licence and trade, he estimated it at £640.

John Purvis said that the house would have cost between £900 and £1,000 to build in 1870, and it would cost at present £800 to repair and modernise it. He estimated the value of the property in 1873, based on the rent and cost of building, at £1,825.

Mr. Shaw said the whole question was how Section 13, especially 13 (2), was to be applied. The appellant wished to ignore the plain meaning of Section 13 (2), but that could not be done. It was not disputed that there was a lease, and that it determined in 1912. In view of the evidence, he did not think that the total value at the determination of the lease was disputed. At the time of the grant of the lease the buildings had been erected, and the consideration for the lease was a premium of £300 and a rent of £20. There was no evidence that any other payments were made in consideration of that lease, so that the Commissioners had to find the value from the premium and rent. In arriving at total value at date of grant one must only consider rent and payments made; one could not consider what the property would have fetched in the market. If Section 13 stood alone, duty would be payable on £2,800, but, discounted under the Revenue Act, 1911, Section 3 (2), the duty came to £67 19s. 11d. The Commissioners had to apply Section 13 (2), and that section pointed out that one had to find two different total values. Mr. Shaw referred to *Commissioners of Inland Revenue v. Anglesey* (1913), 3 K. B., 62; *Marquis Camden v. Commissioners of Inland Revenue*; *Stepney and Bow Foundation v. Commissioners of Inland Revenue* (1913), 3 K. B., 570.

Mr. Phillips, in reply, argued that the direction in Section 13 (2) was in no sense exclusive; if other material was available, that might be taken in addition to the rent and payments, and in this case a further consideration for the lease was the previous building of the house. The object of the Act was to tax the true benefit by getting at the true values, not an artificial benefit deduced from artificial values.

Awarded: That the total value at the determination of the lease was

£3,600 ; total value at the grant of the lease, £1,660 ; value of the benefit accruing to the lessor, £1,940, and that reversion duty is payable. That the costs incurred by the appellant be paid by the Commissioners.

For the appellant : F. Phillips, instructed by Sandom, Kersey & Knight.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before H. E. MITTON, ESQ., Referee, 11th February, 1914.

WILLIAM HARRISON, LIMITED, AND OTHERS *v.* THE COMMISSIONERS OF INLAND REVENUE.

MINERAL RIGHTS DUTY—MINING LEASE—RENTAL VALUE—RIGHT TO WORK MINERALS—FINANCE (1909-10) ACT, 1910, SS. 20 (2), 23 (2).

This case involved appeals against five assessments to mineral rights duty on the rents received by the appellants under mining leases granted by them of various properties. The main contention of the appellants was that part of the rents represented payment for injury to the surface, and that the rental value should be reduced by that amount for the purpose of assessment to duty.

At the hearing it was agreed that the appeals in respect of two assessments should stand over for investigation by the Commissioners, the right of the appellants to appeal in future, if they so desired, being assured to them. The subjects of these two assessments were minerals underlying copyhold land, one appellant being owner of the minerals, and another appellant being copyhold tenant of the surface, and it was claimed that the circumstances brought the case exactly within the decision of the Court of Appeal in *Commissioners of Inland Revenue v. Joicey* (1913), 2 K. B., 580.

Mr. Bentley said that the appeals against the remaining assessments involved a question of general principle. The same considerations applied to all the remaining leases involved, as, though there were differences, they were not substantial. He contended (1) in the case where the minerals and the surface were in separate ownerships, that the only person taxable was the person who granted the right to work the minerals by virtue of his ownership of them, and that the surface owner would not be liable to mineral rights duty, although he received a benefit ; (2) in the case where the owner of the minerals and the surface was the same, that the minerals must be treated separately for all purposes, and that the part of the rent which represented a return for damage to the surface was not taxable.

He laid great stress on the words of Section 23 (2) : " For the purposes of " valuation under this part of this Act, all minerals shall be treated as a " separate parcel of land." The Legislature had in mind the minerals pure and simple, and there was no direction that they should be valued plus a right to let down the surface. The owner could split himself up into two capacities, one as owner of the minerals, and one as owner of the surface. The damage to the surface was considerable.

Mr. Kingdon said that all the leases stood practically on the same footing, and, for the purpose of his argument, he would deal with the lease numbered 39. That lease, granted by W. E. Harrison, gave to the lessees power to get the minerals without leaving subjacent or adjacent support. By Section 20 (1) mineral rights duty was to be paid on the rental value of the right to work minerals. Apart from Section 20 (2) (a), one might come to a very different estimate of the rental value, but Section 20 (2) (a) was a controlling provision. (*Duke of Beaufort v. Commissioners of Inland Revenue* [1913], 3 K. B., 48.)

There was no dispute as to what was the amount of rent paid, nor was it denied that this was a mining lease which gave the right to work minerals. The rent was paid in respect of that right. It was not disputed that W. E. Harrison had the right to get the minerals, and that he granted that right, getting payment in return. The case of *Commissioners of Inland Revenue v. Joicey* (*supra*) showed by implication that it was immaterial, when a man had the right to get minerals and could grant that right, what the payment represented to the lessor when he received it. One could not split up the payment into profit and the recoupment for damage, *i.e.*, the economic factors in the mind of the lessor. The payment was all in respect of the right to work minerals, and the lessor knew of the impending damage when he granted the right. The suggestion of the appellants would result in a liability to heavy increment value duty. If one granted minerals, one granted the right to get them. In this case there was one right, and one right only, conferred.

Award : The arguments of both sides did not satisfy me that any part of the rents assessed represented payment to the appellants for injury to the surface lands.

I find that the assessments were properly made in accordance with Section 20 of the Finance (1909-10) Act, 1910, and I order that the expenses incurred by the Commissioners be paid by the appellants.

For the appellants : J. Bentley (Wragge & Co., Birmingham).

For the respondents : F. W. W. Kingdon, as-istant solicitor to the Inland Revenue.

Before GEO. BENNETT MITCHELL, ESQ., *Referee*, 17th February, 1914.

CITY OF ABERDEEN LAND ASSOCIATION, LIMITED, *v.* THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—SITE VALUE—DEDUCTIONS FROM TOTAL VALUE—"EXPENDITURE OF A CAPITAL NATURE"—GIFT BY LANDOWNERS OF PORTION OF THEIR ESTATE FOR RAILWAY STATION—CONSEQUENT INCREASE IN VALUE OF REMAINDER—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8) s. 25 (4) (B) & (C).

Held, that a gift by landowners of a portion of their undeveloped estate to a railway company for (*inter alia*) the erection of a railway station, by which the value of the remainder of the estate was increased, was "expenditure of a capital nature," and that the value attributable thereto was allowable as a deduction from total value to arrive at assessable site value.

The appellants, who were the owners of the Woodside estate in the neighbourhood of Aberdeen, appealed against the refusal of the Commissioners, in estimating the original site value of the estate, to allow as a deduction therefrom the value attributable to a gift by the appellants of a portion of their estate to the Great North of Scotland Railway Company for a suburban railway station and other purposes. It appeared that in 1901 the inhabitants in the west end of Woodside, none of whom were tenants or feuars on the appellants' estate, were agitating for the erection of a suburban railway station conveniently situated for them. The appellants were approached on the subject and agreed, if the railway company would erect a station, to give the necessary ground free of cost. After considerable negotiation an arrangement was made with the railway company, in pursuance of which the appellants conveyed to them free of cost a portion of their estate extending to 2·720 acres for (1) the erection of a station and station-master's house, and offices; (2) the diversion and widening of Persley Bridge Road; and (3) the widening of the railway. The appellants considered that the erection of the station and the diversion and widening of the road had increased the value of their estate to the extent of not less than £1,000, and they accordingly claimed a deduction of that amount from the total value of the estate on the ground that the gift of the land was "expenditure of a capital nature" within the meaning of Section 25 (4) (b) of the Finance (1909-10) Act, 1910, or alternatively that they were entitled to a deduction of part of said increase under Section 25 (4) (c).

The appellants maintained—(1) That it was common knowledge that the erection of a railway station increased the rental and capital value of adjacent land. Prior to the gift of the land there was no public demand for building ground in the district, and there was little demand even yet; but the erection of the station had brought nearer the time when a demand would arise. The value of the estate had accordingly been increased.

The presence of the Aberdeen Corporation Tramways and the Donside Suburban Tramways might have added to the value of the estate; but the presence of the railway station was a much more valuable asset, because the railway formed a speedier method of transit to and from the town. (2) The conveyance of the land to the railway company was "expenditure of a capital nature." The expenditure need not be in money. It need only be capital expenditure "in 'the accountants' sense of the word'" (*Rex v. Wraith* [1907], 2 K. B., 756), or "an expenditure which would appear as a debit when you are 'dealing with assets.'" (*English Crown Spelter Company, Limited, v. Baker* [1908], 99 L. T., 353.) In any event the conveyance of the land was equivalent to a payment to the company of the value of the land conveyed. If the appellants had sold the land to the railway company and had thereafter contributed the price towards the cost of the scheme, the Commissioners could not have challenged the deduction claimed, and the appellants should not be differently treated because they had adopted the shorter and directer method of transferring the land to the company free of cost. (3) The conveyance of the land to the railway company for their station was not a "gift." The railway company became bound, in accepting the land, to spend a considerable sum of money in erecting station buildings, and in diverting and widening the adjacent road. The appellants, in agreeing to hand over the land, did so in the expectation that the joint acts of themselves and the railway company would add substantially, as they had done, to the capital value of the remainder of the Woodside Estate. It was the value attributable to the act of the appellants which was claimed as a deduction.

For the respondents it was argued—(1) That the increase in the total value must be "directly attributable" to the expenditure, while in the present case the enhanced value of the land retained was due to the public demand for building land in the district, and not to the gift of the land or the erection of the railway station. The demand by the public was the primary and direct cause without which there could be no value. An access did not in normal circumstances create a value. It was merely a means of realising a value which was there beforehand. The construction of the railway station could only affect the value of the land *indirectly*. Further, the existence of the two tramway systems, which afforded a frequent and convenient means of access to the estate, entirely neutralised any possible effect upon the value of the estate due to the presence of the railway station. The estate would not realise more in the market with the station than without it. (2) On the assumption that the action of the appellants and the railway company between them had directly enhanced the value of the remaining land, such additional value could not be split up between the two causes. The expenditure by the railway company could obviously not be taken into account, and it was impossible to separate what was due to the railway company and what was due to the appellants. If the railway company had not made a station and offered travelling facilities, the gift of the land would have had absolutely no effect. The value due to the erection of the station and the value due to the land was an *unum quid*, which was not capable of being divided. (3) "Capital

"expenditure" meant capital expenditure of money. Words must be given their ordinary natural meaning (*Inland Revenue v. Herbert's Trustees* [1913], A. C., 326; 1913, S. C. (H. L.), 34); and capital expenditure in the ordinary sense meant an expenditure of money. The purpose of the expression "expenditure of a capital nature" was to confine the allowance to expenditure of capital as distinguished from expenditure of income or maintenance. Further, from a construction of Section 25 (4) (c), it was quite clear that "expenditure" did not include a "gift" of land. The Legislature had specifically dealt with the question, and had deliberately confined the deduction to be allowed for land "gifted" to the purposes set out in that subsection.

The Referee, in his award, decided that the gift of the land was an "expenditure of a capital nature," and that the appellants were entitled to an allowance in respect of the land so gifted.

In a note to his award he said :—

"Both parties agreed that it would not be necessary to consider the question of value, as it was not anticipated there would be any difficulty in adjusting a figure in the event of the finding being in favour of the appellants.

"In making the contribution which they did towards the erection of a station, the association were looking to the further development of their estate as a building subject and expecting a return in increased value. The amount of the increased value and proportion thereof due to the conveyance of the land, I am not asked to consider; but that the value of the estate has increased seems plain. The presence of a railway station with its more rapid means of, and more extended, communication, is bound to increase the value of the property near it, especially if near a city, and it therefore follows that part of the increased value of the remaining land is directly attributable to the conveyance of the land to the railway company, as without the land no railway station could have been erected.

"The capital of the association is invested in land, and if they make a contribution of land, they are, it seems to me, spending part of their capital, 'which is expenditure of a capital nature.' On this point the argument used by the appellants seems sound, viz., that if they had sold the land to the railway company, and had thereafter given the price received as a contribution to the erection of the station, it could not have been maintained that such contribution was not an 'expenditure of a capital nature.' The adoption of the shorter method of giving the land as a contribution does not, I think, make that contribution any the less an expenditure of a capital nature."

"In the whole circumstances I am of opinion that the association are entitled to get a deduction from the total value of the remainder of the estate, of the value attributable to the capital expenditure which they have thus made."

For the appellants : Edmonds & Ledingham, Aberdeen.

For the respondents : H. Watson, of the Solicitor's Department, Inland Revenue.

Before H. M. COBB, Esq., Referee, 31st March and 3rd April, 1914.

WHIDBORNE'S EXECUTORS *v.* COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—ASSESSABLE SITE VALUE—DEDUCTIONS FOR STREETS AND ROADS—VALUE ATTRIBUTABLE—PROOF TO THE COMMISSIONERS—COST OF DIVESTING SITE—FINANCE (1909-10) ACT, 1910, s. 25 (4) (b) (c) & (e).

This appeal, which concerned 12 and 18, Strickland Street, Deptford, originally come before the Referee in February, 1912, when he decided that the full site value of each plot was £90 instead of £78, and the assessable site value £51 10s. instead of £62 (Reports of Appeals, part 1, p. 4). On appeal to the King's Bench Division, the point was raised on behalf of the Commissioners that no "proof" had been given to the Commissioners of the value attributable to the items of deduction set out in Section 25 (4), and it was agreed that the proceedings should commence *de novo* before the Referee, the Commissioners delivering a fresh Form VII. in order that the appellants might furnish to them such proof as they considered necessary (Reports of Appeals, part 4, p. 252). The points therefore involved in the present hearing were whether proof had been given to the Commissioners of the value attributable to the items claimed under Section 25 (4), and what deductions, if any, were to be made from the agreed total value under Section 25 (4) (b), (c), and (e), to arrive at assessable site value.

Mr. Allen, after formally taking the point that the hearing was a consultation, and that the Referee had no power to hear evidence, submitted that "proof" meant reasonable proof, which an expert in valuation could accept, that a certain part of the total value on April 30, 1909, was attributable to the things defined in Section 25 (4) (b) (c) and (d). He claimed to be entitled to lump 25 (4) (b) and 25 (4) (c) together, whereas the Commissioners said that each one must be taken separately. Deductions under 25 (4) (e) had not to be proved to the Commissioners, but deductions under 25 (4) (b) and (c) had to be proved. To give proof the appellants had filled up Form VII., and in that form and the accompanying correspondence they stated that £8,000 had been spent on St. John's Road, Ravensbourne Road, Elverson Road, Batsford Street, Strickland Street, and the sewers of Strickland Street, and that £45 was, as regards 12, Strickland Street, the value attributable under Section 25 (4) (b) and (c). They also claimed that the cost of divesting the site of 12, Strickland Street would be £35. At the former hearing the Referee had deducted £38 10s. under Section 25 (4) (b) and (c), and the appellants would not be dissatisfied with the same figure. The appellants had proved a large value attributable to items in 25 (4) (b) and (c), by Form VII., by a series of plans, by evidence and documents put in at the former hearing. On what had been given to the Commissioners, the inference was irresistible that a large value was attributable to the things claimed; any competent valuer would have agreed that a large part of the total value

was attributable to the items in Section 25 (4) (b) and (c). The £45 bore no relation to the £8,000.

Theodore G. Chambers thought that £45, or 50 per cent. of the site value, was attributable to the items specified in Section 25 (4) (b) and (c). He had gone very carefully into the process of development, and produced plans of the estate at various dates. He arrived at £8,000 as the amount expended as follows: 4,690 feet of road at 9s. per foot, spent by the owner in making up the roads originally, £2,100; 25s. per foot spent by the local authorities and charged on the lessees, the frontagers, £5,800; 475 feet of sewer at 6s. per foot, £140; total, say, £8,000. Before the streets were made up he valued the land in question at £9 per plot; after development a ground rent of £2 10s. was obtained. In his opinion Section 25 (4) (b) and (c) could not be split up into two or three items, except in an academic manner. The value attributable to the combined causes could be accurately estimated from the whole process of development. There was enough material to estimate the minimum amount attributable.

Cross-examined: If only £2,100 were to be taken into account as expenditure it would not make any difference to his figure of the value attributable. Expenditure by a lessee was expenditure by a person interested in the land. He did not deduce the £45 from the £8,000; it was taken as 50 per cent. of the full site value, as a minimum. Half the final retail value was the utmost that the undeveloped land would fetch; one had to imagine it undeveloped at the present day. He did not agree that, if Batsford Street was a market garden, Strickland Street would be as valuable as it was. There had been no improvement in values in Strickland Street since 1885.

Edwin Savill said that an increase of 100 per cent. was the least that could be put as value attributable to roads. £25 was a fair estimate of the cost of clearing the site. He did not think it was possible to split up the deductions under Section 25 (4) (b) and 25 (4) (c). Either subsection by itself would achieve no object, and would have very little effect on the value.

Cross-examined: He did not take the expenditure into account at all, but the condition of the road had some bearing; if the roads were in a different condition all the values would be different, but the proportion of value attributable would have been the same. If the road was taken over and completed by the local authority the value of the plot would probably not be greater than when the road was made up by the owner and not yet taken over.

A. V. Buckland said that it was impossible to sever Sections 25 (4) (b) and 25 (4) (c); he had tried to since the passing of the Act, and had not succeeded yet. He considered the minimum deduction under those two subsections to be 50 per cent. of the full site value. Frontage value depended on the letting value of a house, not on the cost of construction of the road.

For the Commissioners—

Edgar Harper, chief valuer under the Board of Inland Revenue, said that £8,000 probably fairly represented the total expenditure on the roads.

He did not attach much importance to that £8,000 ; it was spent too long ago. He had considered how much value remained of the work done both by the owner and the local authority, and he had allowed £16, viz., £1 per foot frontage. By any other method one got into inextricable confusion. The real measure of value to 12, Strickland Street was the cost of the road authority's work, less the amount used in destroying and remaking the owner's work. No value was attributable to the mere act of appropriation in this case ; Section 25 (4) (c) was intended to operate in cases where appropriation had given access to back land. He distinguished clearly between 25 (4) (b) and 25 (4) (c). He had agreed £25 as the cost of an owner employing men to break the house and cart away the materials, but the cost of housebreaking was always outweighed by the sale of the materials ; a housebreaker would pay a small sum for the right to demolish the house.

Cross-examined : If all the other houses except 12, Strickland Street were down, he would still take £16 as the value attributable. He averaged the value attributable over the frontages with flank frontages at a lower rate. He allowed nothing for the value of the land which the owner gave up for the roads. [It was here agreed by the Commissioners that £8,000 was spent on the roads coloured brown in the plan and on the sewer in all, and by the appellants that £2,000 was all that was spent by the owners, the rest being spent by the authorities and charged on the frontagers.] In 1865, before the road was taken over by the local authority, 12, Strickland Street was let at a ground rent of £2 5s. If the full site value could be realised without divesting, the question of the housebreaker did not arise.

Douglas Young said that no value was attributable to appropriation under Section 25 (4) (c). When the frontage values were secured, the road values disappeared in them. Where there was an obstruction to access, the removal of that obstruction would give rise to a deduction for appropriation. Under Section 25 (4) (b) £1 per foot was sufficient for the roads as they were. As he understood the Act, the actual cost of the roads in relation to the frontages had to be taken. If 50 per cent. was to be taken, it was 50 per cent. of the value in 1867. Any rise in value was due to other causes than road-making. He should expect a housebreaker to clear this site without cost, probably to pay something.

Cross-examined : He instanced a building estate of 40 acres bought at £300 per acre. Road and sewer-making, professional charges, and interest on capital he put at £14,715 ; total cost, £26,715. He estimated this to realise after development £51,750. If no land had been given up for roads, the commercial operation would have been impossible.

John Sutcliffe, borough surveyor of Deptford, said that the contract for making up Strickland Street came to £324 19s. 4d., which worked out at 7s. per foot run. The frontage of 12, Strickland Street was 15 feet 10 inches. He had cleared sites in Deptford lately, and estimated that one would get £5 per house from a housebreaker.

Mr. Finlay said that the present claim was not the same as on the former occasion ; it was framed differently, and the amounts claimed were different. In the particulars of works executed certain roads were claimed

for, and those only. He formally took the point that there had been no proof to the Commissioners, but did not press it. The main point was, what allowances should be made; Subsections 25 (4) (b) and 25 (4) (c) were *prima facie* separate. The reason why the Referee had heard so much of the impossibility of separating them was because there really was no claim under Section 25 (4) (c). In buying a building estate one based the price on the amount of frontages one expected to get. No value was created by the appropriation of land for roads in the ordinary normal case. Section 25 (4) (c) had regard not to the internal cutting up of an estate, but to the provision of means of access to it. He conceded that something was to be allowed for works executed, but what had been allowed was amply sufficient. It was claimed that each street was useful to the other, but each street had been fully allowed for. Mr. Chambers said that his claim was the same whether the expenditure to be considered were £8,000 or £2,000; if that were right there was no value left to be attributed to the expenditure by the local authority, which was exceedingly startling. He submitted that the £5,800 could not be allowed under Section 25 (4) (b); the motive of the local board would not be to improve the value of the land as building land, nor were the local board persons interested in the land. The words of the subsection contemplated something in the nature of a voluntary payment, not a compulsory levy. It was impossible to say that the expense was incurred for the purpose of improving the land as building land; the lessees did not care about that. £2,000 was the right amount from which to start, and if that was right, £16 was a great deal too much to allow. The complete divorce of cost from value was a fallacy; one might create value in excess of or less than the expenditure, but, apart from special circumstances, one expected to create a value bearing some relation to the expenditure. He did not press the point that expenditure by a lessee was not by a person interested in the land. Even assuming that 50 per cent. was allowable for roads, it was 50 per cent. of the value in 1867, and not in 1909; the rise in value from 1867 to 1909 was not due to the roads.

Subsection 25 (4) (c) applied to cases where the buildings were worse than useless, where the land was worth more with the buildings off than with them on. Here the total value was £270, and the site value £90, and under these circumstances it would not be necessary to divest for the purpose of realising the full site value. Otherwise every building would have to be divested, however valuable and suitable to the site.

Mr. Allen, in reply, said that Section 25 (4) (d) answered the case of the Commissioners. Under that subsection one could group a number of items, and there was far more difference between "goodwill" and "the redemption of land tax" than between Section 25 (4) (b) and 25 (4) (c). Labelling by sections did not preclude one from lumping them together. He could not understand the argument that if a person already owned the land the value was there already, and appropriation did not add any value. On Mr. Young's illustration, the value was not there till development had taken place; before that it was impossible to realise the retail value. The appellants could not put a figure on the deduction under Section 25 (4) (c) in this case, because 25 (4) (b) and 25 (4) (c) could not be separated

commercially. What the frontages were worth in 1865 had nothing to do with the case. With regard to Section 25 (4) (e), full site value was the value of the stripped site; if one got a different figure than the full site value, one was not realising the full site value. These values were purely imaginary, they were no good to anyone, but were merely statutory conceptions. Before the expenditure by the local authority a ground rent of £2 5s. was obtained, and there was an obligation in the leases on the frontagers to pay for the road. Actual expenditure was not the criterion of value attributable.

Award:—

| | | | | |
|-------------------------|-----|-----|-----|------|
| Gross value, agreed ... | ... | ... | ... | £270 |
| Total value, agreed ... | ... | ... | ... | £270 |

That an allowance ought to be made in respect of works executed, capital expenditure, appropriation of land for streets, roads, &c., under Section 25 (4) (b) and (c), and that the amount of such deduction should be £38 10s.

That the deduction from total value to arrive at assessable site value should be as follows:—

| | | |
|--|------|--------|
| Deductions from gross value to arrive at full site value | £180 | 0 |
| Deductions for works executed, &c., as above | ... | £38 10 |
| Total deductions | ... | ... |
| Assessable site value | ... | ... |
| | £218 | 10 |
| | £51 | 10 |

That no deduction should be made under Section 25 (4) (e). It is agreed between the parties that costs should be dealt with in the High Court.

For the appellants: W. Allen, instructed by Lucas & Sons.

For the respondents: W. Finlay, instructed by the Solicitor of Inland Revenue.

[Appeal pending.]

Before THOMAS JONES, ESQ., *Referee*, April 6th, 1914.

SHEFFIELD AND SOUTH YORKSHIRE NAVIGATION COMPANY
v. THE COMMISSIONERS OF INLAND REVENUE.

INCREMENT VALUE DUTY—MINERALS—MINING LEASE FOR TERM OF
LESS THAN FOURTEEN YEARS—LIABILITY TO DUTY—FINANCE
(1909-10) ACT, 1910, SS. 1, 22, 23.

This appeal raised the question of the liability of minerals worked under a mining lease to pay annual increment value duty, and the point in

issue was whether the exemption in Section 1 (a), which exempts from duty leases for a period not exceeding fourteen years, applied to mining leases. The facts and arguments of the case appear sufficiently from the following

Award: In pursuance of the reference (dated March 11, 1914) of the above-mentioned appeal, the parties attended at my office, No. 5, Little George Street, Westminster, S.W., on the 6th inst., the appellants being represented by Mr. Gerald Sturt, of the firm of Messrs. Johnson, Weatherall & Sturt, 7, King's Bench Walk, Temple, E.C., and the Commissioners by Mr. J. H. Shaw.

No evidence was tendered; the appeal being argued by Mr. Sturt for the appellants; and by Mr. Shaw for the Commissioners.

The appeal is against the assessment of annual increment value duty under Part I. of the Finance (1909-10) Act, 1910.

And the grounds of appeal are: As the term of the lease is for ten years only, it is claimed that the lease comes within the exception contained in Section 1 (a) of the Finance (1909-10) Act, 1910.

The lease referred to is a mining lease, dated December 23, 1909, from the Sheffield and South Yorkshire Navigation Company to the Denaby and Cadeby Main Collieries, Limited, and the parcels are "all that seam of " coal commonly called the Barnsley Seam, lying under all those several " freehold pieces or parcels of land situate in the parish of Mexborough, " in the county of York, containing 3 acres 3 roods and 32 perches, or " thereabouts, and an adjoining strip of land comprising 24 perches." The minerals underlie the Mexborough Canal.

The term is ten years from January 1, 1910, determinable as therein after mentioned.

The minimum rent is £100 per annum, merging into an acreage rent of £200 per acre, with a provision that all the rents reserved shall cease to be payable when the whole of the said seam of coal thereby demised has been paid for by the lessees at the rate aforesaid.

There is a proviso in the last part of the lease as follows:—

" Provided always and it is hereby agreed and declared that notwithstanding this lease shall have become ended or determined by effluxion " of time, or shall have been determined by notice given by the lessees " under the powers hereinbefore contained, the lessees shall be entitled " without further payment, for a period of ten years after the expiration " of the said term of ten years, hereby granted, to maintain and use all " roads and drifts constructed by the lessees under the said lands for the " purpose of enabling the lessees to work out the contiguous coal forming " part of the Barnsley Seam demised to the lessees."

It was agreed that if increment value duty is found to be chargeable upon the lease, the figures of value assessed thereon are not objected to by the appellants.

For the appellants Mr. Sturt claimed:—

1. That Part I. of the Finance (1909-10) Act, 1910, covering Sections 1 to 42 inclusive, all relates to increment value duty and land values generally; that all the sections are interdependent, and must be considered as a whole.

2. That increment value duty is only created and becomes chargeable under Part I., Section 1, of the said Act.

3. That by Section 1 (a) no increment value duty is chargeable on the mining lease in question, on the ground that the grant, "in pursuance of" any contract made after the commencement of this Act, of any lease (not "being a lease for a term of years not exceeding fourteen years) of the "land," brings this lease within the exemption set out in the said Section 1 (a).

4. That while by Section 41, paragraph 1 ("Definitions" of the Act), the expression "land" does not include any incorporeal hereditament issuing or granted out of the land, by inference it included all else, and therefore governed a lease of minerals.

5. That Section 22 (3) implies that increment value duty under a mining lease is only to be paid "where that duty is chargeable," and therefore contemplated the exception defined in Section 1 (a), and that these words clearly imply that no duty is chargeable on a mining lease which does not exceed a term of fourteen years.

For the Commissioners Mr. Shaw agreed :—

That Part I. of the Finance (1909-10) Act, 1910, must be accepted as a whole ; but that the expression "increment value duty," as applied to land, under Section 1, is not the same as the increment value duty when applied to minerals, under Sections 20 to 25 inclusive, more especially under Section 22 (1), and that Section 1 only governs Section 22 in so far as it is not in conflict with the method of arriving at increment value duty on "minerals," which is to be ascertained in a different manner to that upon "land."

That the term "mining lease" in Section 22 has not the same meaning as the term "lease" in Section 1 (a).

That the method of arriving at increment value duty on minerals is necessarily different to that adopted for finding increment value duty on the surface ; as, in the one case, the subject-matter is a more or less rapidly wasting one, and may entirely disappear in a couple of years, or by the time the lease terminated ; whereas the surface always remains, and is not a wasting hereditament. Therefore there was no reason for restricting the term of a mining lease to a minimum term of fourteen years for the purpose of conferring exemption.

That Section 22 (1) implies that increment value duty should be charged on all occasions "as a duty annually in manner provided by this "Act."

That the Legislature intended that increment value duty on minerals should accrue on an entirely different basis to that upon land *quâ land* ; and that the exemption of the fourteen years' period does not operate in the case of a mining lease, as the inherent conditions are so different from those governing a surface lease.

That whatever the period of a mining lease, if granted after the Finance Act, 1910, came into operation, increment value duty should be paid upon it, and that there should be no exemption in any event.

The question appears to me to be one for the decision of the High Court as to the interpretation to be placed upon the increment value duty

clauses of Part I. of the Finance (1909-10) Act, 1910, and their application to mining leases for periods not exceeding fourteen years.

I have carefully read through the various sections of Part. I. of the said Act, and would call attention to the wording and bearing of—

Section 1 (*a*) ;

Section 4 (1), (2) ;

Section 22 (1), (2), (3) ;

Section 23 (2), (4) ;

Section 24, "Expression" No. 3 ;

Section 41, "Expression" Nos. 1, 3, and 6 ;

and to the definition of the word "rent" in the preliminary part of the Conveyancing and Law of Property Act, 1881, Clause 2, Section 9 (relating to leases), where "rent" is defined as follows : "Yearly or other "rent, toll, duty, royalty, or other reservation by the acre, the ton, or "otherwise."

Having well considered the arguments and the points raised therein and thereon, my decision is :—

That the exemption claimed by the appellants under Section 1 (*a*) applies to a mining lease, "not being a lease for a term of years not "exceeding fourteen years" ; that the lease in question being for a term of ten years from January 1, 1910, comes within the exemption set out in the said subsection, and that no increment value duty is payable in respect thereof.

I do not consider the proviso in the said lease set out on page 2 of this decision is, in effect, an extension of the said lease for a further term of ten years, as no royalty, rent, or wayleave is payable therefor ; and therefore it does not come within Section 41 (paragraph 5) of the Finance Act, which defines that : "The term of the lease shall, where the lease contains "an obligation to renew the lease, be deemed to include the period for "which the lease may be renewed."

For the appellants : Gerald Sturt (Johnson, Weatherall & Sturt).

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before J. D. WALLIS, ESQ., Referee, 28th April, 1914.

H. HUGHES v. THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—TOTAL VALUE—SPECIAL PURCHASER—
FINANCE (1909-10) ACT, 1910, s. 25.

Mr. Graham said that the appeal was against a provisional valuation of the Wyddfyd Estate, 20a. 1r. 18p. in extent, on the Great Orme, Llandudno, on the ground that the total value was insufficient. The gross value in the provisional valuation was put at £3,032, which, after an agreed deduction

of £32 for tithe rent-charge, left an original total value of £3,000, the assessable site value being the same. That total value was insufficient, and should be increased to £5,000. It was a matter of considerable importance, because on July 11, 1911, two years before the provisional valuation was made, the property was sold to the Llandudno Urban Council for £5,000. If the provisional valuation was allowed to stand there appeared at once an increment of £2,000, with a resulting claim of £400 for duty. In view of local conditions, the rise in the district could not possibly show any such increment in the time, and the original total value was absurd on the face of it. The property was situated next to a piece of land belonging to Lord Mostyn, which was adjacent to the "Happy Valley," owned by the council. Lord Mostyn had recently given the council control of his piece of land. For many years the public had rights of way up the mountain, and the council considered it essential, for the preservation of the amenities of the "Happy Valley," to have control of as much of the hill, known as Pen Dinas, as possible. They were already laying out Lord Mostyn's land as an extension of the "Happy Valley."

The property was important from an archæological point of view, an old castle there being most interesting to visitors. It was an important purchase, and that induced the council to give £5,000. The council was a prospective purchaser of the land on April 30, 1909, and quite prepared to give £5,000 on that date, as was paid two years later. He contended that the district valuer had wrongly interpreted the words "open market," as he had left out every possible purchaser, or, at all events, had insufficiently considered the possibility of the council purchasing. He ought in his valuation to have taken notice of the fact that in 1911 the council bought the land for £5,000. That that was the way in which Section 25 had to be construed was shown by the decision in *The Commissioners of Inland Revenue v. Buchanan and others*. According to that case, the Referee was bound to take into consideration what the council had given for the land, because matters were in the same position in 1909 as in 1911. Scrutton, J., had held that he could not exclude from the open market the principal buyer, though for particular reasons he would pay a higher price than other people. Therefore, the council could not be excluded from consideration, although it might be taken that they required the land for sentimental reasons for the purpose of improving the town. The evidence would show that since 1909 property in the district had not increased in value.

John Owen said he had been a builder in Llandudno for thirty-five years, an alderman of the county council for twelve years, and a member of the Llandudno Council for seventeen years. Before 1909 he knew the council were determined to purchase the appellant's land at some future date, and he told Mr. Thomas about it several times. When the council purchased the land in 1911 for £5,000 he considered it was worth that to them for the special reasons mentioned, and if it was worth that to them in 1911 it was equally worth it in 1909. There had not been any increase in the value of land for development during those years.

Cross-examined : The land from the point of view of a building estate,

and compared with other land in the neighbourhood, was worth between £4,500 and £5,000 in 1909. A good deal of the land could not be built on to any extent. About 6 acres could be built on, 4 of which would be worth 3s. a yard, and the remainder 2s. a yard. His value of £5,000 included the cost of roads and drainage. He knew of other land that had sold at 3s. per yard.

Rev. J. S. James gave evidence as to the interest of the ruins on Pen Dinas. It was important that the ruins should be in the possession of the local authority and open to the public.

Thomas B. Farrington said that there were no local conditions ruling on Great Orme to make property more valuable in 1911 than in 1909, and if the land in question was worth £5,000 to the council in 1911, it was equally worth it in 1909.

Cross-examined : He had been asked whether £1,500 was a fair offer for the land, and in an affidavit he expressed the opinion that in February, 1911, that was a good price for it. He had heard that the property was bought by Mr. Thomas in 1892 for £1,250. In November, 1910, he died, and an application was made for the estate to be wound up in the Chancery Division. In May, 1911, there was a provisional sale of the land to Mr. G. James for £1,800, and about that time the council offered Mr. James £2,500 for it. Four valuers inspected it, and they all valued the land at less than £3,000. In his opinion the fact that the council had eventually given £5,000 showed the value of the land. The value of a thing was the price obtained for it. This was a very special case.

By the Referee : It had never occurred to him that the council might be the purchasers.

F. J. Sarson said he had been a member of the council for over twenty years, and was its present chairman. He considered that the council were quite justified in giving £5,000 for the land.

Cross-examined : He was a member of the council in 1907 when they negotiated with Mr. James for the land at £2,500. Mr. James told them he would not sell under £3,000, and the committee asked for an option to purchase at that sum until they got the authority of the full council. Mr. James withdrew his offer, and the council got the provisional contract of sale cancelled in the High Court, Warrington, J., directing that the property should be put up to auction, and that the council should start the bidding at £2,800. Finally, the property was bought for £5,000, after negotiations.

A. Hewitt said that in 1911 he was consulted as to the value of the estate, and he valued it at £2,800, but he did not put any extra value because the council were the prospective purchasers. He valued it from a building point of view.

Alfred Conolly, town clerk of Llandudno, said that about 1904 Mr. Thomas told him he had had a good offer to sell the land for the erection of an Eiffel tower. The council were justified in giving £5,000 for the property for the extension of the "Happy Valley," which was a valuable asset to the town.

Cross-examined : If the amenities of the "Happy Valley" were destroyed, the town would lose £10,000 to £15,000. The council offered

£3,000, but were gradually forced up to £5,000 to avoid the risk of the intervention of a syndicate.

For the Commissioners—

D. T. Davies, superintending valuer for Wales, said that when Mr. Thomas died, his solicitors, for the purpose of estate duty, gave the principal value of the property as £875. After the sale to the council a corrected affidavit was filed, showing a principal value of £5,000. In valuing the property at £3,000 he took into consideration that the council was probably in the market as a purchaser in 1909. The difficulties as to access to the land and the drainage were considerable. The figure of 3s. a yard for building purposes was a fair offer, subject to the owner making the roads. The estate would take ten or twelve years to develop.

E. E. Bone gave evidence of the withdrawal of the offer of Mr. James to sell the land to the council for £3,000, and the subsequent legal proceedings.

J. M. Porter considered that the value of the land was £2,800, and no seller could possibly expect to get more than £3,000.

Mr. Shaw said the whole point in the case was what significance the Referee would attach to the words of Section 25. It was clear from the evidence that every surveyor of experience who had inspected the estate for the purpose of making a valuation had come to the conclusion that the value of the property, using the term in the sense that a surveyor and valuer used it, was not more than £3,000. That being so, how far was the Referee going to be influenced in his opinion of the value of the property in 1909 by the fact that a purchaser was found in 1911 to give £5,000? It was not an ordinary sale; there were very special circumstances about it. The council approached the vendor in a very unusual way. It had been suggested that if a man was willing to give a certain sum for a property that must be the value, because it was the value to him. That argument could be pressed very far. If a man in the street saw a hawker selling what he called gold rings, and bought one for 25s., and on arriving home found that the ring was made of copper gilt, could it be said that the value of the ring to the man was 25s. because he gave that amount? That was the inference drawn by the appellant in this case.

Award:—

- (1) That the property was purchased by the Llandudno Urban District Council in July, 1911, for the sum of £5,000.
- (2) That there was no increase in the value of the property between April 30, 1909, and July, 1911.
- (3) That the property was particularly valuable to the urban district council for the purpose of preserving and protecting the amenities of the town, and that this fact had an influence on the value in the open market.
- (4) I accordingly find for the appellant, as follows: Gross value and full site value, £5,000; total value and assessable site value, £4,948.

- (5) The costs incurred by the appellant to be paid by the Commissioners.

For the appellant : A. Graham, instructed by Johnson & Chamberlain, Llandudno.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before J. M. CLARK, ESQ., Referee, 12th and 13th May, 1914.

WALTER MORRISON *v.* THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION — AGRICULTURAL LAND — FULL SITE VALUE — DEDUCTIONS — HEATHER — STONE WALLS — FINANCE (1909-10) ACT, 1910, s. 25.

Mr. Dickens said that the Referee would not be troubled as to gross or total value; the one question was, What was the market value of the divested site? Scrutton, J., in *Smyth v. The Commissioners of Inland Revenue*, had decided that bare site meant what it said. This was a farm laid out for agriculture, and with a sporting value attached to it. In dealing with a high moorland farm, with a good deal of heather and grass, what was to be divested? [Mr. Kingdon here admitted, for the purposes of the hearing before the Referee, that the judgment in *Smyth v. The Commissioners* applied to heather.] It was to be divested of houses, heather, and grass. The dispute was whether the stone walls, of which there were eleven miles, were to be divested. The farm was one of 2,156 acres, of which about 220 acres were pasture and meadow, the rest being rough pasture, white land, and a considerable amount of heather. The gross value was agreed at £7,660, and the total value at £7,400. The assessable site value had no complications, as the only deduction was the difference between gross and full site value. It had been decided by Scrutton, J., that sporting value ought not to be included in agricultural value, so the sporting value had been agreed at £2,100. The Commissioners put the difference at £950, making the full site value £6,710, which was a ridiculous figure. When the heather was gone, the land would be equally useless for agriculture or sporting. The character and lie of the land were all important when considering the effect of the absence of heather. The highest point was 2,230 and the lowest 1,200 feet above sea level, and the greater part lay between 1,300 and 1,400 feet; there were steep slopes with limestone rocks rising above the surface. The stone walls were built for an indispensable purpose in this part of the country, namely, for shelter. He submitted that the walls were buildings within the meaning of Section 25. (*Long Eaton Recreation Grounds Company v. Midland Railway* [1912], 2 K. B., 574; *Lary v. London County Council* [1895], 2 Q. B., 577.) Having regard to their nature and user, the farm could not be used with-

out them. Gross value must include walls, and if heather and grass were to be stripped, *a fortiori* indispensable things like walls must be divested. The heather and grass held the land in its place, held the otherwise shifting soil together; when they were gone the rain and the snow would wash the land away into the hollows. A buyer of the divested site would have to spend on buildings alone between £2,500 and £3,000, and would have to build 25,500 yards of wall at 3s. per yard run. No farmer would touch it. Besides, if there were no heather he would get no return for 12 or 15 years, and possibly not then. No man would make a bid when he could see fully equipped farms close by, and the site value would be nil. There was a road running through the land, which drawings showed to be a structure, but, if there was nothing else there, it did not matter whether there was a road or not. Even if the walls were left, the land would be worth nothing divested of heather and grass.

Ernest Watson said that in May, 1913, he inspected the farm to check the provisional valuations. There was not more accommodation than necessary. The buildings would cost about £2,400. There were about 11 miles of walls. The object of building the walls was to shelter sheep. If they were only for division wire fences would have been sufficient. If everything was taken away from the farm, leaving the bare land, there would be practically no value in it. It might be possible to get a speculator to give a few hundred pounds. A farmer would not buy it.

Cross-examined: He did not know of any farms in the neighbourhood that were used for sheep without walls. If the land was not divested of the grass and heather, but was divested of the walls and buildings, the value would be £3,350. In that figure he did not contemplate the walls would be put up again. His low figure was accounted for by the fact that the land would have to be farmed in a totally different way.

H. Trustram Eve said he viewed the property on March 27, 1914. Divested of everything, the land was not a market proposition. At midnight on April 29, 1909, it would be occupied by the farmer, his family, labourers, and cattle, and he was instructed to imagine that all the buildings were lifted up and gone for ever. Under the conditions of divestment he had to assume, all the human beings and stock would disappear. There would be no way of physically farming the land, and no cattle to make manure, which was of tremendous importance to the grass, which must be manured every other year. It would cease to appeal to anyone to occupy for the purpose of agriculture. He could not see how they were to get it back again. The bottom land was good deep soil, and parts could be got back to grass with great care. If the land above began to scour and wash down it would cover up the land below. From an agricultural point of view he could not see how the land could be brought back to farming. Sufficient buildings could not be erected for £950. To farm the land properly it would be necessary to have very thick farm buildings to keep the wind out. It was also essential to have walls for shelter for the sheep. It was impossible to lamb without buildings, and the present buildings were not in excess of requirements. Assuming everything on the land was gone, he believed someone might give £500 for the joy of possessing a full site proposition.

Cross-examined: He had not considered the aspect of the case unless the grass and the heather were divested.

Richard Lodge, the tenant of the farm, said that the walls were absolutely essential for shelter for sheep and cattle, and without them he would not have the farm at any price.

John Maughan said the walls were substantially built, and absolutely necessary for farming. If the land was divested of everything it would be worth a very nominal figure; with the walls it would be worth a little more. He had not considered the alternative value of the farm with the grass and heather on it. He saw no alternative to the walls.

By the Referee: The difference between the value of the farm divested of everything and the farm divested with the walls remaining would be £50.

C. Barton said that if the land was divested, the grass and heather would not grow again under any circumstances. He would give £100 for the farm divested of everything, and in all probability he would not see his money again. If the walls remained the speculator might give another £100. He lived within seven miles of the farm, and he did not know of any moor in the neighbourhood that was not surrounded by a wall. To put up a wire fence would mean death to the sporting value. Wire was put up on one moor, with the result that 300 grouse were killed.

F. B. Punchard said the farm divested of everything would not be worth anything. Walls were absolutely necessary. If a speculator asked him what it was worth, he would reply, "Don't give more than £500." With the walls remaining on the divested site it would be worth a little more, but they would tumble down unless they were attended to.

Mr. Kingdon said that the only question was whether the walls, used for boundary, division, or agriculture, were buildings. He had hoped to get alternative values with various divestments, but he could not insist on their being found. That course would have been convenient, as otherwise there was no excuse for coming before the Referee on a point which admitted of no argument. If this farm was to be stripped, how could it be valued by any one? It was quite impossible to say who would buy or on what basis the price would be fixed; it would not be a marketable commodity at all. If the price varied from £50 to £500 without the walls, it was quite impossible to say what would be given with the walls on. He would have been prepared to justify the difference of £960, but not on the ground that the same buildings could have been put up. Other methods of user would be open to the purchaser. Sections 25 (2) and 25 (4) (b) showed the fallacy of the idea that everything conferred by man was to come off; if the value produced was only agricultural value, the expenditure was not to come off; and the value of heather was not conferred by man, so that the Act appeared to result in the divestment of something conferred by nature. Sections 7, 14 (2), and 17 (2) protected agricultural land from payment of duty, and if agricultural land was not taxed, one would not expect to find ingredients in agricultural value taken off. These walls were not buildings in the ordinary sense of the word. A carriage or a boat, though spoken of as "built," were not "buildings"; the verb "build" had a wide use, but the noun "building" had not. The

New English Dictionary defined "building" as "a structure in the nature of a house, built where it is to stand." Was it conceivable that under the Agricultural Rates Act these walls were "buildings" and on their value the higher rate should be paid? He cited *Moir v. Williams* (1892), 1 Q. B., 264; *Reg. v. Overseers of Neath*, L. R., 6 Q. B., 707; *R. v. Gregory*, 5 B. and A., 561; *Bowes v. Law*, L. R., 9 Eq., 636; *Brown v. Local Board of Holyhead*, 7 T. L. R., 332; *Ellis v. Plumstead Board of Works*, 68 L. T., 291. He did not rely very much on the cases, but the dicta showed that the word did not apply to such things as these walls. Scrutton, J., in *Waite v. The Commissioners of Inland Revenue*, said that the use of the word "structure" somewhat narrowed the meaning of "building." He should not deny that the walls were "structures," but they were not used in connection with or appurtenant to the buildings. In this Act one could not get at any such thing as the value of the bare site. It was clear that everything was not to be divested.

Mr. Dickens, in reply, said that *Moir v. Williams* (*supra*) turned on what was the meaning of "house." The definition of "building" in the Century Dictionary was: "A fabric built or constructed; a structure; an edifice; as commonly understood, a house for residence, business, or public use, or for shelter of animals or storage of goods. In law, anything erected by art, and fixed upon or in the soil, composed of different pieces connected together, and designed for permanent use in the position in which it is so fixed, is a building." If that was correct, it covered his case. Such a farm as this in such a country as this could not be used without these walls. The object of the Act was to get some datum for the purpose of future measurement. Section 25 (2) dealt with (1) live, (2) dead things; Scrutton, J., in *Smyth v. The Commissioners of Inland Revenue* dealt with live things; the same reasoning applied to dead things. What was the sense of taking off a house which cost £1,000 and not taking off walls which cost £3,000? He did not press the point that the walls were structures, but he must not be thought to have given it up. The exemption of agricultural land from duty could not affect the interpretation of Section 25 (2).

Award:—

- (1) The item 1 in the provisional valuation (gross value) should be £7,660 instead of £8,060.
- (2) The total value should be £7,400 instead of £7,800.
- (3) The items 2 and 12 are insufficient, and should respectively be £6,460 instead of £950.

In arriving at this amount of £6,460, I have included in it (a) the grass and heather and all things growing on the farm, and (b) the farmhouse and farm buildings together with the walls enclosing the garden, and foldyard used in connection with the farmhouse and farm buildings respectively, and also the outlying buildings on the farm consisting of a shooting hut and a lambing shed, and a barn and cowshed on the part of the farm called Blishmire, but I have not included the dry stone walls which form

the boundary fences of the farm, and the division fences between the various enclosures of the farm. If these walls ought to be included, the above amount of £6,460 would have been increased by £700. The various buildings and structures referred to by me, or typical parts thereof, are shown on the two sets of photographs signed by me as exhibits at the request of the parties to the appeal as follows, viz. :—

- (a) Seven photographs marked W.M., put in before me on behalf of the appellant ;
- (b) Nine photographs, marked I.R., put in before me on behalf of the Commissioners of Inland Revenue. The farm is described on the Ordnance map signed by me, and is thereon shown by being coloured round with red.
- (4) The full site value should be £1,200 instead of £7,110.
- (5) The deduction for tithe rent-charge should be £260.
- (6) The assessable site value should be £940 instead of £6,850.
- (7) The value of the sporting rights is £2,100.
- (8) The value of land for agricultural purposes should be £5,300 instead of £5,700.

For the appellant : H. F. Dickens, K.C., and William Allen, instructed by Royds, Rawstorne & Co., agents for Charlesworth & Co., Settle.

For the respondents : F. W. W. Kingdon, assistant solicitor to the Inland Revenue.

[Appeal pending.]

Before J. D. WALLIS, ESQ., Referee, 12th May, 1914.

CHARLES HADFIELD AND OTHERS *v.* THE COMMISSIONERS OF
INLAND REVENUE.

PROVISIONAL VALUATION—GROSS VALUE—FINANCE (1909-10) ACT,
1910, s. 25.

Mr. Bartley said that the case involved two appeals against provisional valuations of Hassop Hall and park in Derbyshire, and the outlying woods and plantations. The provisional valuations gave the gross values as follows : (1) Hassop Hall and the park itself, comprising 231 acres, £18,270 ; and (2) the outlying woods, 61 acres, £3,280. Those values were much too low. The appellants put them at (1) between £30,000 and £40,000, and (2) £4,500. The value of the timber was agreed at £2,204, leaving £2,296 as the value of the land. The life tenant was an old

gentleman of eighty, so that it was important to get the value correct. The property from its situation had many advantages. There were five entrances to the park, and two lodges. The gardens were old and matured, and there were numerous glasshouses. The trees were of considerable value from an ornamental point of view. The property was surrounded by a substantial wall. It had a romantic and historical interest, and could not be valued in the ordinary way. Parts of the Hall were built in the seventeenth century. In 1745 the Young Pretender stayed at the Hall on his way to London. It had some very fine fixtures, a mantelpiece dated 1607, a beautiful chandelier, and carved oak screen. It was an ideal country estate in a fine situation. To rebuild would cost at least £45,000. In recent years there had been expensive renovations, including a new roof, costing between £3,000 and £4,000, the stables and ballroom had been reconstructed at a cost of £2,000, and £2,000 had been spent on the drains. The first provisional valuation, served in 1912, gave a gross value in all of £15,488, and, on objection to that, the present valuation was served in January, 1913.

Sir W. H. Dunn gave a description of the Hall. He estimated the gross value of the property in all at £30,000, putting the Hall and park at £25,000. One could not value the place on its commercial value owing to historical associations. The ornamental value of the timber was £7,000, the commercial value about £4,500.

E. J. Fooks, agent to the estate, outlined the historical associations. There had been many approaches with a view to purchase, but no cash offer.

Charles M. Hadfield said that the drainage was renovated in 1904 at a cost of £2,000. To replace the buildings would cost £46,128.

Cross-examined : He agreed that the cost of replacing buildings was not a test of their selling value. There was only one bathroom ; a purchaser would require more. There was no artificial light, and parts of the landings were dark according to modern ideas. He had not formed any opinion as to the selling value.

Joseph J. Greaves said that the building was well done, and in a much better state than he had expected. He adopted Sir William Dunn's figures for the timber as well within the mark. The property could not be built now under £50,000, including the terraces, boundary wall, ornamental gardens, stables, &c. He estimated the present value of these at £20,000. Adding 231 acres at £40 and £7,000 for timber, made the gross value £36,240. This was a classic property, and, if a man wanted to buy it, he would give a fancy price for it. It was very accessible for motors.

Cross-examined : The park must go with the house, or nobody would give anything for the house. £2,000 would make the house habitable and comfortable according to modern ideas. This was an unique property.

For the Commissioners—

Thomas G. Fisher, superintending valuer of the Central East Division, said that the appeal first came before him in April, 1912. After inspecting the property he suggested a gross value of £18,270, which was, in his opinion, considerably higher than the strict market value. As the basis of valuation of the Hall and park, he assumed an annual value of £523,

excluding sporting. Deductions for repairs and outgoings £85, leaving net annual value £438, at thirty years' purchase £13,146. Add for commercial value of the timber £3,500, and for sporting £50 per annum, at twenty years' purchase £1,000; making market and total value £17,640. From that he deducted £1,058 for immediate repairs necessary, leaving £16,582. In order to settle he added 10 per cent. for historical associations. The caretaker said that the cellar stairs had had to be bricked up to keep out the rats; the presence of rats meant leakage from sewer drains. More bathrooms were wanted, and a modern system of treating the sewage. It was an ordinary country mansion. He took the timber by valuation. The outlying woodlands he took at £14 8s. per acre divested of timber, giving gross value £3,280.

Cross-examined: He would not base the value of Chatsworth on an assumed annual value, because it was an unique property. If this were unique he would not base the value on the annual value. The ornamental value of the timber was included in the rent.

P. M. Faraday said that, dealing with the Hall and park, the bedrooms were not good; he understood that the house had been unoccupied for about thirty-five years. It was not easy to sell this kind of house. He estimated the market value at £16,666, £500 per annum gross, at 33½ years' purchase. The highest possible price for sale was £16,000, as a purchaser would have to repair. That price included the timber, without which no one would take such a house. Fisher's figures were quite high enough for the woodlands; for rating his firm had put them at 4s. per acre per annum.

Cross-examined: He attached no value to historical interest.

John German estimated the gross annual value of the Hall and park at £500; less £75 repairs, £425, which, at thirty-three years' purchase, gave a gross value of £14,025. An immediate expenditure of at least £1,000 was required. The values of the woodlands in the provisional valuation were distinctly high, and not justified by the value of the land and timber in the open market. It was very difficult to sell such a place as this.

Mr. Shaw said that the issues were very clearly defined, the only questions being the market value of the Hall and park, and the site value of the woodland. The house was constructed at a time when conditions of light and sanitary arrangements were very different from those of the present. A purchaser would have to spend a great deal inside the Hall, and also on the park and gardens. The cesspools would have to be reconstructed. Sir William Dunn had put the value at £25,500, Mr. Greaves at over £36,000, which led to the conclusion that guesswork did not arrive at a very certain result. The witnesses for the Commissioners all agreed at a gross annual value of about £500, and their method was the only way of arriving at the real value. He suggested that the historic advantages were somewhat illusory; they were almost common to houses of a certain size and age. It could not be assumed that a purchaser would pay much attention to them. As to the woodlands, the Commissioners had put the outside value on them.

Mr. Bartley, in reply, said that valuation became a guess in the case of property of this sort, when one got to a hypothetical rent. It must be put

on a different principle to the ordinary house, as this was a fancy property.

Awarded: That the figures of the provisional valuations were correct, and that the costs of the Commissioners be paid by the appellants.

For the appellants : D. C. Bartley, instructed by Fooks, Chadwick & Co.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before THOMAS JONES, ESQ., *Referee*, June 9th, 1914.

W. H. NICHOLSON'S EXECUTORS *v.* THE COMMISSIONERS OF
INLAND REVENUE.

INCREMENT VALUE DUTY — MINERALS — FAILURE TO ESTIMATE
CAPITAL VALUE IN FORM IV.—JURISDICTION OF REFEREE—
FINANCE (1909-10) ACT, 1910, SS. 23, 33.

The appellants did not wish a full report to be made of this case, but the facts and arguments appear sufficiently from the following

Award: No evidence was tendered on either side, the appeal resting upon the argument put forward on behalf of the appellants and the Commissioners respectively.

The appeal is against "The assessment of increment value duty of £100 for the mines and minerals lying under Greenroads Farm and lands, Wardle, Lancashire."

The grounds of appeal are as follow:—

- (1) That no increment or profit of any kind is revealed. It was held by the owners for a very long period, and has had a steady decline in value.
- (2) That I am refused leave to amend Form IV., upon which the value of the mines and minerals was inadvertently omitted.
- (3) I am informed that leave to amend Form IV. has been frequently granted, and object to such invidious distinctions.

Mr. George Buckley, for the appellants, stated that the property came into their hands forty years ago, when it was let at £40 per annum ; that attempts were made about that time by the tenants to prove the existence of coal, and the owners financially assisted them, but no satisfactory result was achieved ; that prior to the year 1891 the owner expended about £1,000 on the property, but, on the expiration of the then tenancy in 1891, it was relet from Lady Day, 1891, for a term of twenty years, at £22 per annum for the first ten years, and £24 per annum for the second ten years, the tenant paying all outgoings ; that the property was valued in 1874 at £2,000, but in October, 1911, it was sold for only £1,100. The rent of

the property at April 30, 1909, was £24 per annum, at which date the minerals were not comprised in any mining lease, nor were they being worked by the proprietor.

In due course, in accordance with the Finance Act, Form IV., with the instructions for making return thereon, was sent to the owners to be filled up on their behalf, and was returned to the Commissioners, through the district valuer, by Messrs. George Buckley & Son, with a letter and memorandum dated September 7, 1910. In the return on Form IV. the gross value of the property was given at £450, which was subsequently increased to £600 by arrangement with the district valuer; and it was then clearly understood that this was not to include any value for minerals which were not dealt with.

In filling up Form IV., the following answers to the questions relating to minerals (T), at the top of page 4, were written:—

- (T) (i.) "The exors. own the minerals—if there are any."
- (ii.) (a) "So far as we know, all minerals are got—we only
"know of coal."
- (b) "No."
- (iii.) "The owners."

In Part II., Form IV., "Additional particulars which may be given, if "desired," no reply or observation was written to question (W) by appellants' agent, either as to the "Nature or capital value of any minerals not "comprised in a mining lease, and not being worked, which have a value "as minerals."

The appellants' contention was—

- (1) That, having called attention in Form IV. to the existence of minerals, it was the duty of the district valuer to put a value upon them, apart from the surface, and that they could then either object to or accept such value within the time appointed.
- (2) That, as no valuation of the minerals had been made by the district valuer, they are entitled, under the Act, to amend their Form IV. return by the insertion of a value for minerals upon the first occasion when any dealing with respect to them took place.
- (3) That appellants (through Mr. Buckley) had made application to the Commissioners to make such amendment after the sale of the property in October, 1911, but the Commissioners had refused their consent to amend.
- (4) That no increment has been revealed from beginning to end.
- (5) That the point at issue is therefore one for the Referee to deal with, and that it comes within the powers conferred upon him by the Act.

Mr. Buckley was asked by me to name an individual case where Form IV. had been allowed to be amended, where, in the original return, minerals had been stated to exist, but no value was put upon them; but he was unable to give me any such precedent, and relied upon

the fact that amendments in values had been permitted in Form IV. by district valuers in fixing the gross values of properties for the purpose of arriving at site values.

Mr. Shaw, for the Commissioners, contended—

- (1) That the appeal is against the assessment of increment value duty upon the value of minerals only, although the sale in October, 1911, included the surface.
- (2) That the Commissioners' claim is for increment value duty on £500, as being the realised value of the minerals over and above the agreed surface value of £500, the difference between the latter and the sale price of £1,100 representing, in fact, minerals upon which no value was put by the appellants in their return to Form IV. on September 7, 1910.
- (3) That appellants' answer to the questions set out in space (T), Form IV., effectively dispose of the question now raised, especially having regard to the footnote attached thereto, which gives owners notice that "Minerals not comprised in a mining lease or being worked are to be treated as having no value as minerals, unless the proprietor of the minerals fills up space (W) below."
- (4) That space (W) above referred to was left unfilled up in their Form IV. return. Section 23 (2) of the Finance Act was relied upon to support this contention.
- (5) That in no part of the Finance Act is it expressed or implied that it is the duty of the district valuer to place a value upon minerals in cases where no return has been made by the owners regarding them, and that the Act clearly defines in that case that no value is to be placed upon them. It is in fact a statutory *sequitur*.
- (6) That if the appellants' contention that owners were entitled to be allowed to amend their Form IV. returns was correct, there would be no object in enacting Section 23 (2).
- (7) That the Legislature clearly intended that where no value is given by the owner on Form IV. in respect of minerals, and they are not being worked, nor in lease, they are to be treated as having no value as minerals at the date of the commencement of the Finance Act, and any value they may afterwards acquire is subject to increment value duty.
- (8) That the instructions sent with and printed on Form IV. clearly warn the owners of property that they must give an estimate of the capital value of minerals if any are intended to be claimed for, or the "no value" consequence prescribed by the Act must operate.
- (9) That as £600 was agreed as the surface value, the additional £500 must be taken as the value of the minerals, upon which increment value duty of £100 is claimed by the Commissioners.
- (10) That neither the Commissioners nor a Referee have power to go outside the wording of the Finance Act, and the Referee has no

power under the Act to decide that the Commissioners must sanction an amendment of a Form IV. return in respect of mineral values where appellants have made no return of value.

- (11) That the answers given (by appellants' agent, Mr. Buckley) on Form IV. showed that they then had grave doubts whether any minerals existed in the property.

Having well considered the arguments, and referred to Section 23 (1) (2) and (3), Section 26 (2) and (3), Section 33 (1) relating to the duty placed upon owners of mineral properties and the powers and duties of a Referee, my view is that the Finance (1909-10) Act, 1910, confers no power upon a Referee to sanction or grant any amendment in the sections of Form IV. referring to mineral values, where no value has been placed upon them by the owner or his agent; and my decision is that I have no power under the Act to grant the requests of the appellants; that no example of any permission by the Commissioners to amend Form IV. in respect of mineral values has been proved to me; that no invidious distinction has been made in the case now under consideration, and that the claim for increment value duty of one hundred pounds upon a total realised mineral value of £500 in October, 1911, over and above the previously agreed figure of £600 for the value of the property, is properly chargeable against the appellants, who returned no value for minerals in their Form IV. return dated September 7, 1910.

No claim for costs was put forward by Mr. Shaw for the Commissioners.

For the appellants: George Buckley.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before THOMAS BINNIE, ESQ., *Referee*, 18th June, 1914.

MRS. ALSTON'S TRUSTEES *v.* THE COMMISSIONERS OF INLAND
REVENUE.

PROVISIONAL VALUATION—TOTAL VALUE—SUFFICIENCY OF VALUA-
TION—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8).

Circumstances in which *held* that original gross value and original total value in provisional valuation were insufficient.

Carnoch House, Glencoe, to which this appeal related, occupies a romantic situation on the shores of Loch Leven, Argyll. It is in the immediate vicinity of Glencoe House, the Scottish seat of the late Lord Strathcona, and only a little way from that scene "of perfidy and blood," the massacre of February 13, 1692.

Mrs. Alston acquired the ground in 1890 by feu charter from the trustees of the late Mrs. Macdonald of Glencoe, and erected the house and laid out the grounds in a most attractive manner. Mrs. Alston died on December 14, 1911, and on April 19, 1912, her trustees sold the property to the late Lord Strathcona for £3,000, the price including certain fittings valued at a small sum. For estate duty purposes the property was returned at £2,992 19s. at Mrs. Alston's death.

The provisional valuation was served on August 29, 1912, and an amended provisional valuation on January 27, 1913, in which latter the figures were original gross value £1,810, original total value £1,650, original full site value £160, original assessable site value nil. The appellants accepted the original assessable site value as correct, but appealed against the total value as being insufficient.

At the hearing before the Referee the following evidence was led :—

Edward Ellice Malcolm, W.S., Fort William, factor on various West Highland estates, said that in January, 1912, he was asked by the appellants' agents to find a purchaser for Carnoch House. Thinking that Lord Strathcona was the most likely purchaser, in view of the proximity of Glencoe House and his obvious interest to preserve its amenity, he communicated with Messrs. Skene, Edwards & Garson, W.S., Lord Strathcona's Edinburgh agents, and ultimately concluded a bargain at £3,000, the price including certain fittings. He produced his correspondence with that firm. The railway to Glencoe was opened in 1902. He considered the price paid for the property a fair price, and not a fancy price. There had been nothing to change the conditions in the neighbourhood during the last twelve years. He considered the property was always likely to find a buyer in Lord Strathcona.

James Garson, W.S., Edinburgh, said that Lord Strathcona had been asked to give evidence in this case, and was willing to do so, but for the inconvenience it might cause him through his being so much in London. At the time of Lord Strathcona's death, negotiations were proceeding with the Inland Revenue with a view to his lordship's evidence being accepted in the form of an affidavit. He knew Lord Strathcona wanted to choose his neighbours, and had been advised to give as much as £3,200 for Carnoch House, and that his lordship was prepared to swear the place was worth no more to him in 1912 than in 1909.

Kenneth Macrae, architect, Oban, said that in August, 1909, he had been asked by the appellants' agents to value Carnoch House for intending lenders, his instructions being to value the place exclusively from a lender's point of view. He made a report and valuation, dated 20 August, 1909, in which he placed the value at £2,800. In making the valuation he did not take Lord Strathcona into account.

No evidence was led for the Commissioners.

For the appellants it was maintained that the price was not excessive, and that, as there had been no change in the conditions affecting the property between 1909 and 1912, the price obtained was a real test of the value. The special value to Lord Strathcona should be taken into account. (*Clay v. Commissioners of Inland Revenue*, post p. 336.)

For the Commissioners it was argued that the sale price was not con-

clusive as to value. Reference was made to *Hornby v. Commissioners of Inland Revenue* (*ante* p. 71). The effective structural value of Carnoch House was only £1,670, and the price paid by Lord Strathcona was a fancy price.

The Referee decided that the original gross value was £3,110, and the original total value was £2,950. He found the appellants entitled to expenses.

For the appellants : McGrigor, Donald & Co., Glasgow.

For the respondents : Alexander Blair, chief valuer, and James Mather, assistant chief valuer for Scotland.

Certain of the Decisions of Referees, &c., reported or referred to in this issue are or may be under Appeal. The results of such Appeals will be reported or referred to in forthcoming issues of these Reports, but in the meantime the possibility of such decisions being reversed on Appeal should be borne in mind.

LAW CASES.

[COURT OF APPEAL.]

ALLEN v. INLAND REVENUE COMMISSIONERS.

[FEBRUARY 3RD, 1914.]

Revenue—Undeveloped Land Duty—Business of Land Development—Sale of Land—Payment by Instalments—Purchaser in Possession before Execution of Conveyance—Assessment of Vendor to Duty—“Recoverable from the Owner for the time being”—Vendor not the Owner—Referee’s Jurisdiction—Right of Appeal—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 19, 33, 41.

Section 19 of the Finance (1909-10) Act, 1910, provides that undeveloped land duty shall be assessed by the Commissioners of Inland Revenue, and shall be recoverable from the owner of the land for the time being. By Section 41 “The expression ‘owner’ means the person entitled “in possession to the rents and profits of the land in virtue of any estate “of freehold.”

A carried on the business of a “land developer” by purchasing land, cutting it up into plots, and selling them to various purchasers under agreements which provided for payment of the purchase money by instalments and for the execution of conveyances on payment of the balance thereof. On the signing of the agreements the purchasers took possession of the plots. The Commissioners assessed A for undeveloped land duty in respect of certain of these plots, but the purchasers, although in possession under their agreements, had not completed their purchases, nor received their conveyances. A appealed to a Referee on the ground that he was not the owner of the land, and was not therefore liable to pay the duty. The Referee decided that the appellant was the owner, and therefore liable. The appellant appealed from this decision to the High Court.

Held, by Scrutton, J., that a person who has been assessed for undeveloped land duty is entitled under Section 33 of the Finance (1909-10) Act, 1910, to appeal against such assessment to a Referee, and to appeal from his decision to the High Court, on the question whether he is the owner of the land in respect of which he has been assessed to duty. And *held*, by the Court of Appeal (affirming the decision of Scrutton, J., on this point),

that at the date of the assessment A was not the owner of the land in question within Section 41 of the Act, and had been wrongly assessed to this duty in respect thereof.

Cozens-Hardy, M.R. : This is an appeal from a decision of Mr. Justice Scrutton, who has decided a point which no doubt is of importance under the Finance (1909-10) Act, 1910, and I think we ought to be very careful not to decide more than is necessary for the purpose of the present appeal. I do not propose to express any opinion upon some of the points which have been raised, and as to which interlocutory observations have been made by one or more members of the Bench. I propose to confine myself to the facts of the present case.

This is a case in which Mr. Allen entered into contracts for the sale of various plots of land to purchasers upon the terms in each case that the purchase money, with interest, was to be payable by instalments extending over several years. In each case the purchaser was and is lawfully in possession by virtue of the contract of sale, but the full purchase money has not been paid, although there is no instalment in arrear. The vendor gets interest on his purchase money, but he cannot, to use the phrase of Lord Justice Knight-Bruce, when he was Vice-Chancellor, have both the mud and the money. He cannot have the interest on the purchase money, and at the same time possession of the rents and profits of the sold estate. Now, who is in possession of the rents and profits of the estate? Suppose a purchaser, before building on his lot, and before completion of the purchase, lets the herbage for cows at £1 a year, or lets the plot to a neighbour for growing potatoes at £1 a year, who can get the rents? There is a perfectly good tenancy by estoppel if by nothing else. I think it plain that Allen could not claim these rents. He has no present right to enter or to claim sixpence. A Court of equity could restrain him if he attempted to enter, and certainly would not grant him a receiver or any other relief in respect of the rents and profits. No doubt in some future event he may have such a right. If default is made in payment of the instalments he may have a right lawfully to enter and lawfully to take such proceedings as he may be advised by giving notice to the tenants, or otherwise acquiring for himself the rents and profits of the land. But that event has not yet arisen. But then the Solicitor-General says that Allen might restrain waste, if the purchaser were to dig gravel or something of the kind. Well, so be it. I am not satisfied that he could in a case like this, but so be it; but that is not the same thing as being in receipt of rents and profits. That simply means that the equitable owner must not change the character of the security which the vendor has for his unpaid purchase money. In my view the real position of the parties is that the purchaser is by virtue of the contract beneficial owner in equity of the property, subject to the vendor's lien for unpaid purchase money, and as such beneficial owner is entitled to the rents and profits; and in these circumstances is it possible to say that Allen is the "owner" as defined by Section 41 of the Finance (1909-10) Act, 1910? According to the language of Section 41 "owner" means "the person entitled in possession to the rents and profits of the "land in virtue of any estate of freehold." In my opinion Allen does not fall within that term. He is not a person who, at the time when the

notices of assessment were served upon him, was entitled in possession to the rents and profits of the land ; and, that being so, I think the decision of the learned Judge below was quite right, and that this appeal must be dismissed with costs.

Sir Samuel Evans, P. : I am of the same opinion, and have very little to add. What we have to do is to construe the definition of "owner" which is to be found in Section 41 of the Act. The contention of the Solicitor-General is that "owner" there is defined in terms appropriate to a definition of an estate. He says that in some cases the word "owner" means the owner of the legal estate, while in others it possibly does not, but that here the expression "person entitled in possession to the rents and profits of the land in virtue of any estate of freehold" is a definition of an estate of a person entitled to receive and to recover rents and profits. I read the language of the section as naturally as I can, and I ask myself, What is the meaning of "owner" as here defined ? It is the "person " entitled in possession to the rents and profits of the land" ; and when once we find in the particular facts of this case who is the person entitled in possession to the rents and profits of this land, that man is the owner within the meaning of this section, and the owner therefore within the meaning of Section 19.

There can be no doubt, I think, that the purchaser of one of the plots of land in question, who was let into possession under the very terms of his contract, was entitled to receive the rents and the profits. In no sense could it be said that under this contract the vendor would be entitled to receive the rents and profits as long as the contract was being carried out. There might come a time, if the instalments were in arrear, when certain rights would accrue to the vendor ; but until such time arrived I am clearly of opinion that under this contract the purchaser was "the person " entitled in possession to the rents and profits of the land" in virtue of an estate of freehold under the agreement, and therefore he was the "owner" within the meaning of this definition, and the "owner" within the meaning of Section 19.

Joyce, J. : I entirely agree with the view expressed by the Master of the Rolls, and I do not think it necessary to add anything.

Cozens-Hardy, M.R. : The appeal will be dismissed with costs.

Appeal dismissed.—(83 L. J. [K. B.], 649.)

[KING'S BENCH DIVISION.]

COMMISSIONERS OF INLAND REVENUE *v.* SMYTH.

[FEBRUARY 28TH, 1814.]

Revenue—Land—Agricultural Land—Valuation—Manures and Tillages—Grass—Private Road—Proper Deductions—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 25.

Under Section 25 of the Finance (1909-10) Act, 1910, the Referee, in valuing agricultural land let to a tenant, should include in the gross value and the total value any sums attributable to the value of unexhausted manures or tillages, and this sum cannot be deducted from the total value in arriving at the assessable site value. The value of the grass growing on the land should be deducted from the gross value in arriving at the full site value, but the question whether the value of a private road used in connection with buildings should be deducted is a question of fact, depending on whether the road is of such a size and permanence as to be a structure within Section 25 (2). The Referee should not deduct from the total value, in arriving at the assessable site value, the value of grass laid down by the tenant, for which he cannot claim compensation.

Mr. Justice Scrutton said : This appeal raises certain questions as to the valuation of agricultural land at Norton Malreward, Chelwood, and is intended as a test case. The hearing before the Referee occupied four days, but on the hearing of the appeal before me only three questions were raised, as follows :—

- (1) Whether the Referee was right (*a*) in including in the gross value and the total value what he describes as "the tenant's interest in unexhausted manures and tillage," amounting to £300; (*b*) in deducting the same sum in respect of the same matters from the total value in arriving at the assessable site value.
- (2) Whether the Referee was right in deducting from the gross value to arrive at full site value (*a*) the value of the grass on the holding, whether natural or sown, amounting to £1,150; (*b*) the value of a certain road, £182.
- (3) Whether the Referee was right in deducting from total value, to arrive at assessable site value, £66, being the value of 22 acres laid down from arable in grass by the tenant.

The first question arises thus. The value of the land is to be estimated as on April 30, 1909. On that day there was certain manurial value in the land, from unexhausted manure, and certain tillages, or preparations for crops, such as ploughing, harrowing, and sowing, had been conducted on the land. If the tenant had terminated his tenancy on April 30, 1909,

there would have been payable to him, either by statute, agreement, or the custom of the country, £300, in theory payable by the landlord, in practice paid by the incoming tenant. This sum is spoken of as "tenant-right," or as by the Referee, "the tenant's interest in unexhausted manures and tillages." The case before the Referee was conducted as if this was an interest in the land, and the question was whether it, as such an interest, was to be added to the valuation of gross value or not. This way of looking at the question seems quite erroneous. By Section 25 of the Finance (1909-10) Act, 1910, the gross value is the market value of the fee simple of the land "in its then condition" free from encumbrances, and any further burden, charge, or restriction. "Fee simple" is defined in Section 41 as "the fee simple in possession not subject to any lease." The land has therefore to be valued as in the occupation of its owner, free from tenancy; and the question between the parties really was: "Is the land to be valued 'literally in its then condition, which will include any value due to unexhausted manure or existing tillages, as the subject contends, or, as contended by the Crown, are the annual operations of agriculture, with their changing value, to be disregarded, and the normal value of the land taken?" This latter construction appears to me to give no meaning to the words "in its then condition." Such manurial value, or tillages, must give some additional value to the land. . . . And the Referee must, in valuing the land "in its then condition," value this particular element in the land. The addition in value may not be the sum an outgoing tenant would receive for it by agreement or statute, it may be more or less than the conventional figure. The Referee's language appears to suggest a wrong test, but as this case is not intended to settle particular figures, but to provide a working rule for the future, I do not propose to send the case back to the Referee to ascertain whether he would give a different sum, considering the matter in the way I have laid down. It is enough to say that Referees in valuing the land "in its then condition" should include, in the gross and total value, any sums attributable to the value of unexhausted manure or tillages performed.

The second half of the first question is whether, when this increased value has been included in gross value and total value, it can be deducted in arriving at assessable site value. The Referee has held that it can, and as all such deductions must be justified under Section 25 (4), he has justified this deduction under Subhead (d) as a part of the total value attributable "to goodwill or any other matter which is personal to the owner, occupier, or other person interested in the land." I am quite unable to follow him in this. I do not propose at present to discuss what "matters personal to the owner" mean in this connection; it is enough to say that they do not, in my opinion, mean "works executed by the owner"; any such deduction must be justified if at all under Subhead (b), which does not cover this case. I think on this point the Referee was wrong, and the deduction cannot be allowed in arriving at assessable site value.

The second point raised was whether certain matters should be deducted from gross value to arrive at full site value. The first of these matters was the grass growing on the farm on April 30, 1909. This undoubtedly raises a question of great general importance and some

difficulty. Counsel for the subject contended that the land should be valued on April 30, 1909, "in its then condition," which would include grass or any other crops, timber, or any other growths then on it. From this gross and full site value they argued there should be deducted under Section 25 (2) "all growing timber, fruit trees, fruit bushes, and "other things growing thereon." Grass and other growing crops were, they said, "things growing thereon." The Solicitor-General for the Crown, as I understood, met this in two ways. In the first place he contended that in valuing the land for gross and full site value, the valuer would disregard the annual temporary operations of husbandry which resulted in sowing and taking away a crop, or in grass growing and withering, and would only value the permanent land. He said, on my questioning him, that, other things being equal, the value of the land in January, when corn or hops were not above the ground, should be the same as in July when they were nearly ripe, for, being annual and temporary operations, the corn and hops should be disregarded by the valuer. Secondly, he contended that, if they were to be valued, they were not to be deducted to arrive at assessable site value. For, he argued, the words "other things growing thereon" must be construed as *ejusdem generis* with the preceding words, "all growing timber, fruit trees, fruit bushes"—which he said were a genus of vegetable growths where each year's growth did not die down, but remained as a substratum for the next year's growth, and where the vegetable growths had what he called a "permanent woody character." This excluded grass, and (as I think he admitted) hops, which have not these characteristics.

The first question is, What must the valuer value? He is to value the land "in its then condition." Certain vegetable growths are, at the time, part of the land. They would pass under a devise of the "land" without more, or a sale of the "land" without more. They are more permanent, as the oak, or more transitory, as the grass. But they may add value to the land whether as timber or hay crop ready to pull or strip, a corn harvest ready to reap or a hay crop ready to cut. Following the words of the Act (which, after all, are the first thing to be considered), I think the valuer valuing the land "in its then condition" must consider and value the vegetable growths then part of the land. I have had some doubt whether he is not entitled to exclude such vegetable growths as are by law emblements, and which pass on the death of the owner intestate, not to the heir as land of real property, but to the next of kin, as chattels or personal property.

His Lordship then took the description of "chattels vegetable" from *Williams on Executors* (10th ed., pp. 536 to 538), and continued: The temptation to think that the draughtsman and the Legislature may not have included these chattels vegetable in "land" is strengthened when the work cited proceeds: "But the rule does not apply to fruit growing "on trees, nor to the plantation of trees," for the Act expressly orders to be deducted "all growing timber, fruit trees, and fruit bushes," which are land, under the doctrine of emblements, and pass to the heir in intestacy, and says nothing expressly about growing crops, which are not land on intestacy under that doctrine and pass to the next of kin. Mr. Justice

Bayley in *Evans v. Roberts* (5 B. and C., 829) in 1826 makes the distinction: "Growing grass does not come within the description of goods and chattels . . . it goes to the heir, and not the executor; but "growing potatoes comes within the description of emblements, and "are deemed chattels by reason of their being raised by labour and "manurance. They go to the executor." But though it is tempting to think that the Legislature was well acquainted with real property law and did not mention growing crops because they were on intestacy, and for the purpose of severance on the death of a tenant, chattels and not land, and therefore not valued, but did mention timber and fruit trees because on intestacy they were land, I think that the fact that for other purposes, devises, and sale, the growing crops are "land" prevents me from acting on this view. I come, therefore, to the conclusion that the Referee must, in valuing land "in its then condition," include all unsevered vegetable growths, whether natural or artificial, transitory or permanent, emblements or not emblements. If so, is there any direction to deduct the value of growing crops, and especially grass, in arriving at the assessable site value? There is not unless they are covered by the words "other things growing on the land," which words do in fact correctly, though generally, describe them.

I have, therefore, to consider the Solicitor-General's contention that the rule of *ejusdem generis* requires me to limit these general words to "the vegetable growths" preceding, which he describes as of a "permanent "woody nature," as opposed to those of an annual growth which die down to the roots, or entirely, each year. It will be seen that this would include all growing crops except fruit on trees and bushes; and the value of corn, hops, strawberries, and hay could not be deducted. If I am right that it was included in the original valuation, this is a strong argument against the Solicitor-General's construction, and it was to meet it that he argued that they should not be included in the original valuation. The first rule of construction in statutes, as in all other documents, is to get at the intention of the parties from the words they have used, read in their ordinary and natural meaning. When this cannot be done, certain artificial rules of construction have been laid down.

On this point his Lordship quoted Lord Halsbury in *The Thames and Mersey Marine Insurance Company v. Hamilton, Fraser and Company* (L. R., 12 App. Cases, p. 490), and continued: I see no ground for limiting the clear general words to excluded matters which it seems to me the policy of the Act places on an equal footing with the matters that will remain included. The assessable site value is called by Lord Haldane in *Inland Revenue Commissioners v. Herbert* (L. R. [1913], A. C., p. 333) the "value of the bare site." I see no reason for adding to it a temporary but valuable covering of its bareness due to cultivation, or anything in the words of the Act pointing to a distinction between coverings which are artificial and natural. Lord Haldane twice groups the matters I have to consider under a compendious *et cetera*—"divested of its buildings, structures, trees, &c."; "sold with all its "buildings, structures, trees, &c." Part of the *et cetera* is in the words of the Act "other things growing thereon," and I am not able to see why

grass, corn, or hops, which come within these words, are to be excluded. I think, therefore, the Referee was right in divesting the land of the grass growing thereon, which he had included in its gross and total value.

The second point on this head was whether the Referee was right in deducting from total value the value of a private road to the farm. He is authorised by Subsection (2) of Section 25 to deduct the value of buildings or any other structures on, in, or under the surface, which are appurtenant to or used in connection with such buildings. It was agreed that this road was "used in connection with such buildings," and the only question was, Is it a "structure"? The Referee saw it and heard evidence about it, and it might be sufficient to say I am not satisfied that his decision is wrong, just as in Hunter's case (30 T. L. R., 363), where the Referee saw and heard evidence about two other roads and found they were not structures, I should have required much persuasion to disturb his decision. But I was invited to give some guidance to Referees on this question, which was said to be continually recurring.

In my view it is a question of fact in each case; a gravel path, though from repeated gravellings it is harder than the surrounding soil, would not, in my opinion, be a structure, while the roads one is familiar with in Switzerland, Tyrol, and Italy, in parts built up on mountain sides, in parts cut out of solid rock, would, I think, clearly be structures, as would the elaborate compositions of concrete, wood blocks, and tarmac used for heavy motor traffic at the present day. I think a structure is something artificially erected, constructed, put together, of a certain degree of size and permanence, which is still maintained as an artificial erection, or which, though not so maintained, has not become indistinguishable in bound from the natural earth surrounding. What degree of size and permanence will do is a question of fact in every case.

In this case I did not see the road, but was furnished with an agreed plan of its nature. In my personal opinion this, though very near the line, is a "structure," but a very little change in its character would take it out of that description. I state this view in case it might help Referees, though it binds nobody, not even myself. I think, therefore, the Referee was right in deducting the value of this road from total value to obtain assessable site value.

The third question is whether the Referee was right in allowing a deduction from total value to reach assessable site value of £66, being the value of 22 acres laid down in grass by the tenant, but which he could not claim compensation for. This is justified as "a matter personal to the occupier" under Subsection (4) (*d*). But, as already stated under the second half of the first question, I can see no justification for this, and I think the deduction cannot be allowed.

The result in figures appears to be that the gross value stands at £11,935; the total value at £11,819; the full site value at £4,625; and the assessable site value at £4,509 (£4,143 and £66 and £300).

There is an agreement that I should deal with the costs below. The subject asked that the assessable site value should be well under £2,000, indeed £964 in her original notice of appeal; and in view of this, and that she has failed in some points, I give no costs below to either side.

I think the subject substantially succeeds on the appeal and I give her the costs of it ; but she called certain evidence which was of very slight value, and which might have been called before the Referee, and I give her no costs of or incidental to or caused by the oral evidence.

There will be leave to appeal, if desired, on all the points raised in the appeal.—(30 T. L. R., 357.)

[KING'S BENCH DIVISION.]

COMMISSIONERS OF INLAND REVENUE . . HUNTER—
HUNTER v. COMMISSIONERS OF INLAND REVENUE.

[FEBRUARY 28TH, 1914.]

*Revenue—Land—Valuation—Agricultural Land—Sporting Rights—
Whether included—Referee—Power to issue Fresh Award—
Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 26 (1).*

The value of sporting rights should not be included in the valuation of land for agricultural purposes under Section 26 (1) of the Finance (1909-10) Act, 1910.

A Referee under the Act, having once issued his award, cannot issue another without the consent of both parties.

Mr. Justice Scrutton said that these were two appeals in respect of the provisional valuation of Chell's Farm, Gravely, Hertfordshire. The hearing before the Referee took five days, but the points argued before him (his Lordship) were few and comparatively simple. [His Lordship dealt with the point as to tillages already decided in *Commissioners of Inland Revenue v. Smyth (supra)*.] The second point on the Crown appeal was whether in valuing the land for agricultural purposes under Section 26 (1) its value for sporting purposes, £245, was included. The term "agriculture" was said, in Section 41, to "include the use of land as meadow or pasture land or orchard or osier or woodland, or for market gardens, nursery grounds, or allotments." That definition did not refer to the use of land as arable or for crops, which apparently was treated as the primary meaning of the word "agriculture," which, however, was to "include" the other matters mentioned. Among these no mention of "sporting" was to be found, and so far neither the statutory nor the ordinary meaning of "agricultural purposes" appeared to include sporting rights. Two sections of the Act were said to throw light on the matter. Section 7 was as follows : "Increment value duty shall not be charged in

“respect of agricultural land while that land has no higher value than its market value at the time for agricultural purposes only : Provided that any value of the land for sporting purposes, or for other purposes dependent upon its use as agricultural land, shall be treated as value for agricultural purposes only except where the value for any such purpose exceeds the agricultural value of the land.” The first clause suggested that sporting value was not included originally in “agricultural purposes only.” The proviso appeared unnecessary in that form, if sporting was an agricultural purpose. In any case, both the market value at the time for agricultural purposes only and the value for sporting purposes would be determined by other valuations than the one made in this case.

Section 17 (2), the other section cited, did not appear to throw any light on the matter. The result was that sporting was not an agricultural purpose within the definition, and just as the valuer was not to include building value in his valuation of land for agricultural purposes, so it appeared that he was not to include the value of sporting rights. The decision of the Referee on that point was wrong, and the figure of value for agricultural purposes should be £9,755. In this case, having regard to the contentions and course of the proceedings below, each party should pay his own costs of the hearing before the Referee, and the Crown, who had substantially succeeded on their appeal, must have the costs of the appeal. There would be leave to appeal, if desired, on the question of sporting rights; the other points to be governed by the appeal in the Norton Malreward case. (*Inland Revenue Commissioners v. Smyth (supra).*)

The appeal of the subject raised a different point which was, he hoped, not likely to occur again. The Crown originally fixed the original full site value at £9,872, and, by amendment, at £7,300; the subject originally put the assessable site value at nil, and did not put it much higher by his evidence. In these circumstances the Referee issued an award on July 3 that the original full site value was £9,580, much higher than the Crown was contending for. It was agreed now that that figure was a mistake. It arose through some carelessness in the Referee's office, including, his Lordship was afraid, the fact that the Referee signed his award without reading it intelligently. But misfortunes did not stop there. The next day the solicitors for the subject, without communicating with the other side, approached the Referee's office orally, and in consequence of what they said he purported to issue an amended award dated July 3, in which the full site value appeared at £5,120 instead of £9,580. The Crown representatives were unable to accept the amended award in view of the fact that the Referee was *functus officio*, having issued his award, and thereupon the subject appealed to vary the original award. The Crown, being satisfied that the original award was a mistake, do not oppose the appeal, and it was not suggested that any harm had resulted from the action of the subject's solicitors, or that they had any improper motive in taking the course they did. But having regard to the fact that the subject's solicitors did not admit that they even committed a technical breach of etiquette (their letter of July 24, 1913), his Lordship thought it right to say that the well-known rule that no communication should be made by one party to a judicial tribunal without the knowledge of the

other party was of the greatest importance and should be strictly observed. That was especially so where the communication led to the alteration of an existing award, and was made orally, so that no record of what it was existed. While no improper motive was imputed to the subject's solicitors, their action was a breach of a well-established rule of great importance, and, as such, most regrettable.

It was clear, also, that a Referee, having once issued his award, could not issue another without the consent of both parties. If an error was to be corrected, unless the parties assented, it could only be done by the Court on proper evidence and with proper procedure. It was of great importance that the Referees should exercise their important duties with strict observance of all rules of judicial procedure.

The appeal would be allowed, and the figure of £5,120, or the proper sum after allowing for the judgment as to tillages, substituted for £9,580, on the first, the only proper award of the Referee; but in the circumstances it would be allowed without costs.—(30 T. L. R., 363.)

[KING'S BENCH DIVISION.]

SIMPSON v. COMMISSIONERS OF INLAND REVENUE.

[MARCH 28TH, 1914.]

Revenue—Referee—Order for Payment of “Expenses”—Amount not assessed—Validity of Order—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 33 (3).

Where a Referee makes an order under Section 33 (3) of the Finance (1909-10) Act, 1910, that any “expenses” incurred by the Inland Revenue Commissioners be paid by the appellant, and does not assess the amount, the order is bad and cannot be made a rule of Court, inasmuch as “expenses,” unlike “costs,” is not a term of legal art, and a taxing master has no jurisdiction to tax “expenses.”

Mr. Justice Scrutton held that the motion must fail. “Expenses” was not in England a term of legal art as it was in Scotland; it was a vague general term, possibly here used by Parliament because proceedings before a Referee under the section were treated as very informal. If costs had been the word used the order would not be bad, because “costs” could be ascertained by taxation by the taxing master, a ministerial and not a judicial officer. This was the principle applied to the award of an arbitrator where either by statute or the terms of submission the award could

be made a rule of Court. (*Holdsworth v. Wilson* (4 B. and S., 1).) Apart from agreement, that rule did not apply where the award was that of an inferior Court. The rule did not apply here because the taxing master had no jurisdiction to tax "expenses." The Court in the absence of statutory provision had no power to remedy the defect by sending the order back to the Referee for him to assess the amount of the expenses. The motion must, therefore, be dismissed with costs.—(30 T. L. R., 436.)

[HOUSE OF LORDS.]

EARL FITZWILLIAM *v.* COMMISSIONERS OF INLAND
REVENUE.

[APRIL 6TH, 1914.]

Revenue—Reversion Duty—Whether Value of Licence attached to Premises to be taken into account—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 13.

A lease of certain property having a cottage upon it was granted by F. in 1861 for a term of fifty years, at an annual rent of £1. Upon the expiry of the lease in April, 1911, there was upon the property a fully-licensed public-house. In June, 1911, F. granted a new lease of the premises for fourteen years at a rental of £29 per annum.

Held, that in estimating the value of the land for the purposes of reversion duty the value of the licence must be taken into consideration.

Decision of the Court of Appeal (29 T. L. R., 538; [1913], 2 K. B., 593) affirmed.

Lord Atkinson said that Lord Fitzwilliam, the appellant, was the owner in fee of a certain house and premises which had been demised under a lease bearing date November 7, 1861, for a term of fifty years from April 6, 1861, at the yearly rent of £4. This lease accordingly terminated on April 6, 1911. The lessees' interest in the premises had become vested in the Scarborough and Whitby Breweries Company, and they were at the termination of the lease in the occupation of a tenant of the company, who had obtained a licence from the proper authorities entitling him to carry on in them the trade and business of a publican. The licence was current at the expiration of the lease, and was what is called in the Licensing (Consolidation) Act of 1910 an "old" licence. On the termination of the lease Lord Fitzwilliam, instead of being merely owner of the reversion,

became the absolute owner in fee in possession of premises, with all the rights, benefits, privileges, and advantages arising from that ownership.

It was found in the case that the total value of the licensed premises as they stood at the termination of the lease within the meaning of the twenty-fifth section of the Finance (1909-10) Act, 1910, was £500. It was admitted that, there being none of the fixed charges and other encumbrances mentioned in the third subsection of that section affecting the premises, their total value as they stood at the termination of the lease was practically their gross value as defined in Subsection 1 of that section. But that was the market value of the fee of the premises as they stood, with all the rights, benefits, privileges, and advantages which the purchaser would acquire by reason of, and springing out of, the ownership of the fee. The nature and *quantum* of the estate and interest acquired by the purchaser were precisely the same as those vested in Lord Fitzwilliam on the termination of the lease. The rights, privileges, and advantages accruing to him by reason of his ownership in fee of these premises under the Licensing (Consolidation) Act of 1910 were, if not greater, certainly not less than those which the purchase of that fee would secure to or confer upon the purchaser. The benefit, therefore, which accrued to Earl Fitzwilliam on the termination of the lease was precisely the same, practically, as that which would be acquired by the purchaser less the value of the reversion already belonging to the earl. That value had been fixed at £120. On these figures it was, he thought, indisputable that the money value of the benefit accruing to Earl Fitzwilliam at the termination of the lease by reason of his then becoming owner in fee in possession of these premises was £500, less £120, or £380. But the "benefit accruing to the "lessor by reason of the determination of the lease" was the very thing which was to be taxed under the provisions of Section 13, Subsection 1, of the Finance (1909-10) Act of 1910. The duty of 10 per cent. upon the money value of that benefit was styled the reversion duty, and if the matter stood there, no doubt could, he thought, be entertained that this duty would be leviable on the sum of £380.

It was contended, however, that the provisions of the second subsection of this section, prescribing the mode on which the value of the benefit so designed to be taxed was to be ascertained, prohibited such a conclusion. By the subsection it was enacted that the value of this benefit should be "deemed to be the amount (if any) by which the total value (as defined "for the purpose of the general provisions of this part of this Act relating "to valuation) of the land at the time the lease determines," less certain deductions inapplicable in this case, "exceeds the total value of the land "at the time of the original grant of the lease to be ascertained," &c. The potent governing word, it was argued, was the word "land." That, it was insisted, meant the physical thing with the physical erections upon it, and the benefits which the owner might derive from the fact that a certain person was licensed under an old licence to sell drink for consumption on these premises was no part of this land itself, and therefore should be ignored, and the total value of this land be taken to be the sum it would fetch in the market if this licence did not exist. That sum was fixed at £300.

That was, in substance, the only argument put forward in support of the proposition that, notwithstanding the words of the final subsection of this Section 13, the lessor should escape the payment of duty on nearly one-half of the money value of the benefit which obviously accrued to him by the determination of the lease, *i.e.*, that he should only pay duty on £180 instead of £320. The clause in brackets in the second subsection linked that subsection up with Section 25 of the statute in which "total value" was defined. It would be observed that gross value was what the land would fetch if sold in the open market in its then condition, free from all encumbrances, charges, or restrictions, other than rates and taxes. The word used in this section was, as in the thirteenth section, "land." It was clear from the second subsection of Section 25 that this word included the buildings erected upon the land. Now the condition of the premises was, among other things, this, that they were suitable for the carrying on in them of the business of a publican. That was one of their inherent capacities affecting their value, and, secondly, they were premises in which a person had by the licence of the proper authorities been authorised to utilise this capacity, and carry on in them this very trade and business, but the fact that a person had been so authorised to utilise this capacity gave to any person who might become owner of the premises a right or claim to have the licence continued.

It was plain from the third subsection of Section 25 that in ascertaining the total value a deduction was to be made from the gross value of the land in respect of any injurious restrictions imposed upon the owner touching its user. And he was quite unable to see on what principle a right to use the premises in a very profitable way for which they had a proved capacity, or a chance of obtaining that right, arising from the very fact of the ownership, was not an element increasing the value of the premises just as a restriction on their use is a consideration diminishing it. The person who would purchase the premises in the market would not purchase the existing licence, but the right or chance of obtaining a similar licence would belong to him. The lessor was, as he had already pointed out, in as good if not in a better position.

Under Section 25 of the Licensing (Consolidation) Act, 1910, he could obtain a transfer of the licence to himself when he went into occupation, or he could let to a new tenant, who could apply for a transfer. Under Section 26 the owner could object successfully to his former tenant obtaining a removal of the licence from the lessor's premises to some other premises newly acquired by him. The lessor could obtain a protection order authorising him to continue to carry on this trade in his premises during the currency of the old licence until the time arrived for applying for a transfer. He got the advantages specified in the fourth schedule to this statute. And, lastly, he acquired an absolute right, if the business was properly conducted, to have the licence renewed or compensation paid in case the renewal be refused. And when that compensation came to be measured it would, under Section 20, be at a sum equal to the difference between the value of the premises as licensed calculated as if the licence were subject to the conditions touching renewal existing before the passing of the Act of 1904, together with the amount of loss due to the

depreciation of trade fixtures and the value which the premises would bear if they were not licensed.

In the face of these provisions it was, he thought, impossible to contend that all these advantages were not part of the benefit that the lessor received by the termination of the lease, and as they sprang from his complete ownership, possession, and occupation of his land with the building on it were not elements increasing the value of these premises. He was therefore of opinion that the judgment of the Court of Appeal was right, and that the appeal should be dismissed, with costs.

Lord Shaw of Dunfermline gave judgment to the like effect. Lord Loreburn and Lord Moulton concurred.—(30 T. L. R., 459.)

[COURT OF APPEAL.]

WAITE'S EXECUTORS *v.* COMMISSIONERS OF INLAND REVENUE.

[MAY 27TH, 1914.]

Revenue—Site Value—Deductions—Farm Land—Value of Sea Walls and Dykes—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 25 (2), (4) (b).

In arriving at the site value of farm land no deduction is to be made under Section 25 (2) and (4) (b) of the Finance (1909-10) Act, 1910, in respect of the value of sea walls by which the land is protected from the sea, or of dykes used for draining the land.

The Court dismissed the appeal.

The Master of the Rolls, after stating the facts, said that the substantial question was whether either of the banks could be called a building. In his opinion it could not. He did not doubt that there might be a building constructed of wood as well as of brick and stone, and that it was not necessary that there should be a roof or cover in order to constitute a building. But a bank composed of consolidated earth and covered with grass, although it might have been constructed so successfully as to have kept out the sea for nearly 2,000 years, was not a "building" for the purposes of this Act.

It was contended that the policy of the Act was to get at what had sometimes been called the "prairie" value of the land, without regard to any improvement made by man. But the language of the Act did not admit of this. Millions of money had been spent by landowners in drainage which had enormously improved their land for agricultural purposes, but no deduction or allowance for this expenditure could be claimed in respect of drainage. If it was not a building, it might possibly be deemed a "structure," but it could not be a structure in connection with the farm buildings.

It was sought to derive assistance from Section 25, Subsection 4 (b), which said in substance that capital expenditure, incurred for the purpose of improving land as building land, or for the purpose of any business, trade, or industry other than agriculture, must be deducted in order to ascertain the assessable site value. What, then, was the meaning of the words "land as building land"? It must be that there was at a given time a reasonable and proximate chance of the lands being laid out and developed for building purposes. In his opinion, although the sea banks by turning a marsh into arable land had rendered it possible to erect buildings, that did not suffice to bring the case within Subsection (4) (b). The exclusion of agriculture in Subsection (4) (b) was again fatal to the claim. But it was urged that the words at the end of the section applied. It was there provided that expenditure incurred for the purpose of improving the land for agriculture might also to some extent be allowed as a deduction, if the expenditure had at the same time improved the value of the land as building land, or for the purpose of any business, trade, or industry other than agriculture. There was nothing, in his opinion, which made those words applicable to the present case. It was ridiculous to suggest that at the present moment there was any business, trade, or industry other than agriculture to which this land could reasonably be applied. In his opinion the decision of the Referee, which was approved by Mr. Justice Scrutton, was correct, and the present appeal must be dismissed with costs.

Lord Justice Swinfen Eady and Lord Justice Pickford delivered judgment to the same effect.—(30 T. L. R., 568).

[COURT OF APPEAL.]

INLAND REVENUE COMMISSIONERS *v.* CLAY AND OTHERS.

INLAND REVENUE COMMISSIONERS *v.* BUCHANAN
AND OTHERS.

[MAY 28TH, 1914.]

Revenue—Land—Gross Value—Price likely to be given by adjoining Owner—Meaning of "Willing Seller"—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 25 (1).

By Section 25 (1) of the Finance (1909-10) Act, 1910, "For the purposes of this part of this Act, the gross value of land means the amount which the fee simple of the land, if sold at the time in the open market by a willing seller in its then condition, free from encumbrances, and from any burden, charge, or restriction (other than rates or taxes), might be expected to realise."

Held, (1) that in calculating the gross value of land the Referee is entitled to take into consideration the fact that an adjoining owner would be likely to offer more for it than it would be worth to anybody else; and

(2) that the words "willing seller" mean a person who is a free agent, and who cannot by compulsory powers be required to sell.

Decision of Scrutton, J. ([1914], 1 K. B., 339) affirmed.

The Master of the Rolls said that this appeal—for he thought the two cases really formed one appeal—raised an important question under Section 25 of the Finance (1909-10) Act, 1910. That section provided that the "gross value" of land meant the amount which the fee simple of the land if sold at the time in the "open market" by a "willing seller" in its then condition (subject to certain deductions) might be expected to realise. His Lordship then stated the facts, and continued: The Referee found the gross value as on April 30, 1909, to be £1,000, and Mr. Justice Scrutton has upheld that view. The contention on the part of the Crown is that the gross value is £750 only. The contest before us has turned mainly upon the words "open market" and "willing seller." I think the view ultimately taken by counsel for the appellants, and also for the respondents, as to the meaning of "open market" is correct. "Open market" includes a sale by auction, but it is not confined to that. It would include property publicly announced in the usual way by insertion in the lists of house agents. But I think that it does not necessarily involve the idea of a sale without reserve. I can see no reason for excluding from consideration the fact that the property is so situated that to one or more persons it presents greater attractions than to anybody else. The house or the land may immediately adjoin one or more landowners likely to offer more than the property would be worth to anybody else. This is a fact which cannot be disregarded. The Solicitor-General ultimately admitted that some regard must be had to the facts. But he urged that one ought only to consider, first, what an outside purchaser would give, say, £750, and then allow the adjoining owner one more bid. In other words, something very small beyond the £750.

We had our attention called to the valuable judgments of Lords Johnston and Salvesen in the recent Scotch case of *Glass v. Commissioners of Inland Revenue* (unreported), and I accept their view of the meaning of the words "open market." The price at which the property was sold in 1910 is not the test of the gross value in April, 1909, but it cannot be disregarded. I adopt the language of Mr. Justice Scrutton: "He (the Referee) was right in this, not because of the sale for £1,000, but "because of the reasonable expectation that a willing seller could get "£1,000 or more from the nursing home." An "open market" sale of property "in its then condition" presupposes a knowledge of its situation with all surrounding circumstances. To say that a small farm in the middle of a wealthy landowner's estate is to be valued without reference to the fact that he will probably be willing to pay a large price, but solely with reference to its ordinary agricultural value, seems to me absurd. If the landowner does not at the moment buy, land brokers or speculators will give more than its pure agricultural value with a view to reselling it at a profit to the landowner. It is for the Referee, whose competence is not challenged, to arrive at a figure. The Court ought not, as a rule, to review his decision on what is in truth a question of fact. I see no ground for supposing that there has been any misdirection in point of law.

The other point is as to the meaning of "willing seller." It is urged that Mrs. Buchanan never was a willing seller ; that she never wished to vacate the house in which she was living, and that it was only after pressure from the trustees that she agreed to sell for £1,000. I am disposed to think that a willing seller is a person who is a free agent and cannot be required by virtue of compulsory powers to sell, and that Mrs. Buchanan was a willing seller when, in 1910, she voluntarily agreed to accept £1,000. If, however, contrary to my view, she was not a willing seller, the problem still remains, for the existence of a willing seller, whether Mrs. Buchanan or not, must be assumed for the purpose of the section.

In my opinion, the judgment of Mr. Justice Scrutton affirming the decision of the Referee was correct, and this appeal must be dismissed with costs.

Lord Justice Swinfen Eady and Lord Justice Pickford delivered judgment to the same effect.—(30 T. L. R., 573.)

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THE FINANCE (1909-10) ACT, 1910, PART I.

REPORTS

OF

APPEALS HEARD BY REFEREES

SPECIALLY PREPARED FOR

*The Surveyors' Institution, the Auctioneers' and Estate Agents' Institute,
the Land Agents' Society, and the Central Land Association*

BY

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AND

JAMES HENRY, B.L., LL.D. (Ireland).

TOGETHER WITH

REFERENCES TO DECISIONS OF THE COURTS OF
LAW UNDER PART I. OF THAT STATUTE.

PART 6.

FEBRUARY, 1915.

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THE FINANCE (1909-10) ACT, 1910.

PART I.

REPORTS

OF

APPEALS HEARD BY REFEREES.

Before JOHN LOPDELL, Esq., Referee, 29th January, 1914.

MRS. A. W. PATTEN v. THE COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—LAND USED FOR AGRICULTURAL PURPOSES—LEASE—EXEMPTION—"OWNER"—FINANCE (1909-10) ACT, 1910, s. 17 (5).

The notice of appeal served by the appellant's agents was as follows:—

"We hereby give notice of our intention to appeal against the assessment of 11s. 3d. duty under Part I. of the Finance Act, and the determination by the Commissioners in respect of the following matter, namely, that Mrs. Agnes W. Patten must be regarded as the 'owner' of the above referred to hereditament."

The particulars of our grounds of appeal are as follows:—

- (1) That Mrs. Agnes W. Patten having by deed dated December 17, 1892, and made between the said Agnes W. Patten of the first part, Richard C. Patten, eldest surviving son of the said Agnes W. Patten, of the second part, William M. Lane of the third part, and Anne Lane of the fourth part, assigned unto the said Anne Lane the lands hereinbefore referred to demised by lease dated March 25, 1856, for the term of 999 years and all the life estate of her the said Agnes W. Patten in said lease and lands and all her interest therein under the will of her husband William Patten to hold unto the said Anne Lane, her executors, administrators and assigns during the life of the said Agnes W. Patten (subject as in said deed mentioned), is not the "owner" of the said lands within the meaning of the said Act; and

- (2) That Mrs. Agnes W. Patten having sent in a claim for exemption under Section 17 (5) of the said Act in respect of this agricultural land held under a tenancy created before April 30, 1909, the said land is exempt from undeveloped land duty, and should not be charged or assessed with same, altogether irrespective of the question whether Mrs. Agnes W. Patten is or is not the "owner" within the meaning of the said Act.

Section 17 (5) referred to is as follows: "Where agricultural land is at the time of the passing of this Act held under a tenancy originally created by a lease or agreement made or entered into before the 30th day of April, 1909, undeveloped land duty shall not be charged on the site value of the land during the original term of that lease or agreement while the tenancy continues thereunder. . . ."

The Referee: The decision on the appeal in respect of which the annexed notice of appeal has been given is as follows:—

Having had the necessary consultations and having regard to the evidence, viz., that it was agreed that the land in question was agricultural land, containing 1 acre and 30 poles, and held under a lease made on March 25, 1856, for a term of 999 years, I hereby decide that as the land is agricultural land held under a tenancy created by a lease made before April 30, 1909, under the provisions of Section 17 (5) of the Finance (1909-10) Act, 1910, it is therefore exempt from payment of undeveloped land duty.

Having given this decision, the question raised under Part I., notice of appeal does not arise.

I award the appellant the costs incurred at the hearing of this appeal.

For the appellant: A. Bell (A. Bell & Sons, Limited).

For the Commissioners: B. Collins, Solicitor of the Inland Revenue Department.

Before JOHN LOPDELL, Esq., Referee, 21st April, 1914.

THE IMPERIAL TOBACCO COMPANY OF GREAT BRITAIN AND IRELAND
v. THE COMMISSIONERS OF INLAND REVENUE.

INCREMENT VALUE DUTY—THE "OCCASION" THE GRANT OF A
LEASE—AMOUNT OF DUTY NOT EXCESSIVE—VALUATION OF
SITE VALUE—FINANCE (1909-10) ACT, 1910, SS. 2 (2) (6) &
32 (1).

The notice of intention to appeal, which was given by the appellants' solicitors, was as follows:—

We hereby give notice of our intention to appeal against the assessment of increment value duty under Part I. of the Finance Act.

The particulars of our grounds of appeal are as follows :—

- (1) That the duty assessed is excessive ;
- (2) That the valuation of the site value on the occasion on which increment value is to be collected is excessive.

The Referee's decision was as follows :—

The decision on the appeal in respect of which the annexed notice of appeal has been given is as follows : The lands forming the subject of this appeal consist of a yard, &c., No. 1, Bridget's Lane, Cork, containing 2 perches and 8 yards, and appear to have been held by the appellants under a lease from March 25, 1857, for 100 years at a rent of £3, adjusted to £2 16s. They subsequently let their premises to Messrs. Beamish and Crawford under a lease dated April 25, 1911, for 45 years and 11 months, the rent reserved being £10 per annum, and which was the "occasion" for demanding increment value duty. The premises are now practically incorporated with those of Messrs. Beamish & Crawford. In the provisional valuation the assessable site value is £90—site value on "occasion" being £180. It is admitted (1) that there was no appreciable change in the value of the land between April 30, 1909, and April 25, 1911, and (2) that the Commissioner of Valuation at the time the provisional valuation of July 22, 1912, was made, had before him the fact that the underlease of April 25, 1911, had been granted, and was aware of the rent reserved thereby.

Having held the necessary consultation, having inspected the premises, having considered the evidence, and having regard to the provisions of Section 2 (2) (6) and Section 32 (1), I am of opinion, and so decide, that the valuation of the site value on "occasion" is not excessive, and therefore the appellants should pay the Commissioners the amount of duty demanded, viz., £13 7s. 1d.

I award the Commissioners the sum of £8 8s. expenses incurred in connection with this appeal.

For the appellants : H. D. Conner, K.C., instructed by Fry & Sons and Mr. Sowerby.

For the respondents : B. Collins, of the Solicitor's Department, Inland Revenue.

Before GEORGE HEWSON, ESQ., D.L., *Referee*, 7th May, 1914.

IN THE MATTER OF AN APPEAL BY CHARLES EDWARD TREVOR
JOHNES COOKMAN, EXECUTOR OF WILLIAM COOKMAN, DECEASED,
AND IN THE MATTER OF THE FINANCE (1909-10) ACT, 1910.

ESTATE DUTY—DECEASED LEAVING LANDS BOUGHT-OUT UNDER
THE IRISH LAND PURCHASE ACTS—ANNUITY FOR REPAYMENT
OF ADVANCE—PRINCIPLE ON WHICH “PRINCIPAL VALUE” IS
FIXED UNDER SECTION 60 (2), FINANCE (1909-10) ACT, 1910—
FIRST ASCERTAIN FEE SIMPLE PRICE OF LANDS IN OPEN
MARKET, AND THEN DEDUCT REDEMPTION VALUE OF THE
LAND PURCHASE ANNUITY—SECTIONS 33, 60, AND 61 OF THE
FINANCE (1909-10) ACT, 1910; SECTION 7 (5) OF THE FINANCE
ACT, 1894.

The relevant facts in this case are as follows:—

William Cookman, of Kiltrea House, Enniscorthy, co. Wexford, died November 19, 1912, possessed *inter alia* of certain lands of Kiltrea and Newtown, co. Wexford, containing 114 acres 2 roods 32 perches statute measure, purchased under the Irish Land Purchase Acts, subject to an annuity of £52 6s. 6d. The Poor Law valuation was £67 5s. per annum. When the lands were purchased under the Land Purchase Acts the sum advanced was £1,610, and at the date of the death of the said William Cookman the redemption price of the land purchase annuity was £1,557 10s. The representatives of the deceased had a valuation made for the purposes of estate duty, and Mr. James P. Connor, an auctioneer of Enniscorthy, made an affidavit in which he swore “that “the marketable value of the holdings at Kiltrea and Newtown, the “property of the above deceased, was, at the date of death of William “Cookman, deceased, viz., on March 19, 1911, the sum of £800 sterling.” This was taken by the estate duty office to be the net value of the property subject to the annuity to the Irish Land Commission, the redemption value of which was, as already stated, £1,557 10s. The estate duty office treated the principal value of the property under Section 7 (5) of the Finance Act, 1894, and Section 60 of the Finance (1909-10) Act, 1910, as being £2,357 17s. From this they deducted £1,557 10s., the redemption price of the annuity, and arrived at £800, on which the duty was assessed. It was intimated that the particulars would be submitted to the Commissioner of Valuation for him to declare what the value was, and that the assessment would be liable to adjustment. The representatives of the deceased (appellants) contended that the method of arriving at the principal value adopted by the estate duty office was wrong, and that the proper method is, in the first instance, to leave out of contemplation entirely the existence of the annuity and to estimate what gross sum the property would fetch if sold in the open market free from any annuity.

The parties appealed to the Referee. Under the Irish Land Purchase Acts an advance of the purchase money is made to the purchasing tenants.

Their holdings are vested in them in fee simple subject to an annuity which is calculated at the rate of $3\frac{1}{2}$ per cent. on the amount of the advance, and this rate pays off both principal and interest. It may be redeemed at any time.

Mr. Gerald Horan appeared for the appellant, the representative of William Cookman, deceased. The point in this appeal is on what basis the valuer should certify the price the property would fetch if sold in the open market. Throughout the Finance (1909-10) Act, 1910, all the sections show in arriving at gross value mortgages or charges are to be disregarded. The privileges granted to tenants by the State cannot be taken into account. In arriving at the price in the open market the amount should not be enhanced by the fact that the State gives assistance in purchasing the fee simple. The valuer should consider what a man putting down cash would give. Under Section 7 (5) of the Act of 1894 you arrive at the price of the fee simple, and then the estate duty office makes the deductions.

Mr. B. Collins, of the Solicitor's Department of the Inland Revenue, Dublin, appeared for the Commissioners of Inland Revenue. Section 7 (5) of the Finance Act, 1894, provides that the principal value of any property shall be estimated to be the price of the property if sold in the open market at the time of the death of the deceased. The price is the sum it was reasonably certain the property would fetch if so sold having regard to all the circumstances. The Commissioners rely on Section 60 (2) of the Finance Act, 1910. The most profitable way to dispose of a farm of this size is to sell it as a unit subject to the Land Commission annuity. You take the net price and add the charge, and the result is made up of what you pay and what you undertake to pay. The principle I contend for was laid down by Fitzgibbon, L.J., in *Attorney-General v. Jameson* ([1904], 2 I. R., 685; [1905], 2 I. R., 218). Section 7 (5) turns "value" into "price" for the purpose of estimating its amount. That price is to be ascertained upon a sale assumed to take place "in the open market." . . . The "price" was to be that which a purchaser would pay for the right "to stand in Henry Jameson's shoes, with good title to get into them and to receive all the profits, subject to all the liabilities of the position." I refer to *Attorney-General v. Partington*, where Cairns, L.C., with reference to the construction of taxing statutes, says: "If the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be . . . if there be admissible in any statute what is called an equitable construction, such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute." I do not propose to give any evidence at all, because it is a question of principle. Section 32 (2) of the Finance (1909-10) Act, 1910, and Section 22 of the Finance Act, 1894, may be mentioned. The former deals with the discharge of any incumbrance, and the latter defines "property" and "incumbrance."

The Referee: The decision on appeal in respect of which the annexed notice of appeal has been given as follows:—

The value of the lands of Kiltrea and Newtown, containing 114 acres 2 roods 32 perches, statute measure, purchased under the Land Pur-

chase Act, subject to an annuity to the Irish Land Commission of £67 5s., is £1,917. I find the appellant entitled to £10 10s. expenses in this appeal. The point I am asked to decide is the principle on which the principal value of property should be arrived at under Section 60 of the Finance Act, 1910, the Inland Revenue contending that, in the case of holdings bought under the Land Purchase Acts, it should be calculated on the sum that the lands would fetch, subject to the annuity, in the open market, in this case estimated at £800, to which should be added the redemption value of the annuity at the date of death, which was calculated at £1,557 10s., making in all a round sum of £2,300. The appellants contend that the principal value means the fee simple value in the open market of the property free from all incumbrances. I think the latter is the correct view. If the principle on which the Inland Revenue assess the principal value is accepted, it would create the position that every year the payments to the sinking fund by the occupier, who is the owner in fee, would reduce the capital value, and this would be affected in a marked degree in holdings bought under the earlier Land Purchase Acts, where annuities can be redeemed in stock, which can at present be bought at a discount of 20 to 25 per cent. I cannot hold that a different principle should be adopted in estimating the value of encumbered land and land free of encumbrances. It was not contended by the Treasury that the principal value was represented by the amount originally advanced to the occupier to buy the fee simple plus what may for convenience be called the tenant-right. The Treasury gave no evidence of value, and I have therefore fixed the principal value as above on the only evidence before me, which was not of a very satisfactory character.

For the appellants: Sinnott & Co.

For the respondents: Frank Martin, of the Solicitor's Department, Inland Revenue.

Before H. M. COBB, ESQ., Referee, 8th June, 1914.

J. C. ISARD AND OTHERS *v.* THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—TOTAL VALUE—SPECIAL PURCHASER—FINANCE (1909-10) ACT, 1910, s. 25.

Mr. Allen said that the facts were simple, and since the decisions of the Scottish Valuation Court in *Glass v. Commissioners of Inland Revenue* and the Court of Appeal in *Commissioners of Inland Revenue v. Clay and Others*, and *Commissioners of Inland Revenue v. Buchanan and Others*, the law was clear. The land was close to the S. E. and C. Railway, and on November 29, 1912, the owners conveyed it to the com-

pany for £1,000. Just before the conveyance a provisional valuation was served, but on February 17, 1913, an amended provisional valuation was served, showing gross and total value, £600; difference between gross and full site value, £285; full site and assessable site value, £315. On March 14, 1913, notice of objection was given on the ground that the total value was too low, and requiring it to be raised to £1,000. That was not done, and on April 28, 1912, notice of appeal was given. In 1908 the property was let to Mr. Nash on a yearly tenancy at £30, but on September 29, 1910, Mr. Nash took it on a full repairing lease for seven years at £35. He did not contend that the value to an ordinary purchaser would be £1,000, but he was going to contend that the total value in the provisional valuation, considering the special circumstances which affected the land, was too low. In considering how much that ought to be raised, the strongest evidence was the fact that it was sold for £1,000 in 1912. If he could prove that the same causes were at work in 1909 affecting the value of the land as regarded the special purchaser, viz., the railway company, as were at work in 1912, the case would be within the recent decision in the Court of Appeal. For some time before 1909 it was common knowledge in the district that the railway company intended to extend their station, and to do that it would be necessary to buy up some of the surrounding property. Before 1909 the company had altered the levels of the bridge to be ready for the extension. It was necessary for the company to buy property for the extension because it was a most important junction. There were three lines of railway there.

The Court of Appeal had decided that a "willing seller" was a person who sold of his own free will, and not under the compulsion of law. Then there were the words "might be expected to realise." The Court decided that if there was a particular purchaser in the market, and it was known that he was likely to acquire the land, or wished to acquire it within some reasonable length of time for a special purpose, then the value which he would give for it above the value that any other purchaser would give must be taken into consideration in arriving at gross value. It also followed that the value given by the special purchaser must be taken into consideration in arriving at total value. It was also decided in the Scotch case, which was very similar. Commissioners for Water wanted to acquire certain land, and they gave a special price, which was admitted to be above the ordinary price the land would have fetched. That special price was taken into consideration by the Court, and the case was sent back to the Referee in order that he might find the gross value after hearing their direction. He submitted that the present case was covered by these authorities.

George Langridge said the property had a frontage of 141 feet 4 inches, and a depth varying from 73 feet to 5 feet 3 inches. It comprised a cottage with two bedrooms, sitting-room, kitchen, offices, bootmaker's shop, and a stable. He was informed that the premises were insured for £400. In 1909 it was well known that the railway company proposed to acquire property. A few years ago they made the approach on the town side, and two years ago they widened it on the other side. In 1909 he would have considered the possibility of the company acquiring the land and put the

value at more than £1,000. There was no difference in the value between 1909 and 1912.

Cross-examined : He put very little value on the buildings because they were very old. Apart from the railway company the property would not be worth more than £400 or £500. He could not point to any property acquired by the company on the appellants' side before 1909.

A. J. Isard said his family owned the property before the railway was constructed. From his own knowledge the company had been acquiring property for the purpose of enlarging the station. He had been a member of the urban council for a number of years, and was now its chairman. Plans were submitted by the railway company to the council with reference to the proposed widenings, and he believed they showed the land in question. Some of the plans were submitted before April, 1909. Prior to 1909 he knew that the company were likely to extend on the side on which his property was situated. He sold the land to the company subject to the repairing lease. Before he granted the lease the tenant offered £600 for the property, and he refused it. In 1912 the railway company offered him £800. He asked for £1,200, and after negotiations he agreed to sell at £1,000.

Cross-examined : To the best of his belief the company had acquired property adjoining his before 1909, but he did not know definitely.

Isaac Race said he was chairman of the assessment committee and a former member of the urban council. It was always considered certain that the railway company would extend the station, and he understood that it would develop on both sides of the line. In 1909 he would have attached a special value to the property on account of the company being possible purchasers. His value was £1,000.

Cross-examined : The plans submitted to the council referred to property on the other side of the line, which was purchased under compulsory powers. He was not certain that one of the plans showed the appellants' property.

For the Commissioners—

G. A. Cooper, district valuer for Maidstone, said that the property had an area of 530 square yards. The buildings were at least 120 or 130 years old, and very dilapidated. The amended provisional valuation gave a very full value of the property in 1909. It was arrived at on the basis of an estimated net rent of £30 a year at 20 years' purchase, £600. The possible contingency of the railway company at some time or other purchasing the property was taken into consideration. Otherwise he would have taken 14 or 15 years' purchase of the net rent. His site value of £315 was based on 140 feet, at an average of 30s. per foot, £210, and, on account of the position of the property and possible purchase by the railway, he added 50 per cent. That worked out at about 12s. per yard, or practically £3,000 an acre. Records showed that the company first acquired property on the appellants' side of the line on January 18, 1911. Ten or twelve years before 1909 it first became known that the railway company was going to widen the station, but the project had hung fire so long that people had probably given up the idea of it ever being carried out. When he made the amended provisional valuation he knew of the sale to the

company, but that did not affect his mind, because the fact that the company might acquire it was allowed for in his valuation. If the company had been committed to a scheme of widening on the appellants' side in 1909 they would have obtained compulsory powers.

Cross-examined : He put the ordinary market value at £450, and allowed £150 as the substantial bid a particular purchaser would make above what an ordinary purchaser might be expected to give. He did not rectify the £600, because he agreed with that. He was not consulted about the first provisional valuation. The possibility of the land being acquired by the company was taken into account in the total value of £600, but not in the other figures. No fresh instructions had been issued since the Buchanan case.

C. Hayley Mason, superintending valuer for the Home Counties (South) Division, said that he inspected the property, and formed the opinion that the site value had been put rather low, and he and Mr. Cooper agreed that £600 was the outside figure for total value, and that £315 would be nearer the site value than that given in the provisional valuation. Full allowance had been made for the potentialities that existed.

Cross-examined : He took the possibility of the company buying the property into account ; he was in a position to get private information which other people could not.

F. G. P. Neve said that in April this year he valued the property as at 1909 at £600. The shape of the land was awkward, and if it could have been used for a better purpose it would have been used years ago. It was not big enough for a factory. A railway siding was impossible, because it was too close to the station. It never appeared to him to be probable that the railway would extend on the appellants' side of the line. The fact that the arch was raised that side did not indicate any such intention. The gradient was raised a few inches with the idea of putting in stouter girders in connection with the rebuilding of the station. He did not know of any property on that side having been acquired by the company before 1911. Apart from the railway the property would be worth £450.

Cross-examined : The decision in the Buchanan case did not alter his views of the value of the property. His valuation had nothing to do with a willing seller.

Mr. Shaw said that the point for decision was whether, in making the valuation, the Commissioners had allowed sufficient for the possibility in 1909 of the railway company acquiring the property, and for its proximity to the railway. He contended that a purchaser in 1909 would not have been willing to give a very enhanced price for the mere possibility that the company would extend on the appellants' side of the line, because the idea of possible widening had been in the air for many years and nothing had been done. The Buchanan case was different from the present case. In that case negotiations had taken place with the owner of the property before 1909. A definite offer had been made, and if the property had been put up for sale in 1909 it would have been common knowledge that the nursing home was anxious to acquire it, and would have repeated the offer already made, with the probability of going higher. In this case it

was not until after 1909 that negotiations began, and it was not until 1911 that the railway company made a move towards acquiring property on the appellants' side of the line. Although the Court in the Scottish case held that the purchase by the water authority should be taken into consideration, it did not suggest that the actual price obtained by the owner should be fixed by the Referee as the value in 1909.

Mr. Allen, in reply, contended that the Commissioners had not given full weight to the cause which the Scottish Court held should be taken into consideration.

Awarded : That the original total value is £840. The costs of the appellants to be paid by the Commissioners.

For the appellants : William Allen, instructed by A. J. Isard.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before P. F. TUCKETT, ESQ., *Referee*, 17th June, 1914.

G. O. DAVIES *v.* THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—GROSS VALUE—FINANCE (1909-10) ACT,
1910, s. 25.

Mr. Allen said that the appeal concerned eight houses, 60/74, even, Marlborough Hill, Wealdstone. The issue was very simple and entirely one of fact. What were the true gross and total values on April 30, 1909 ? He did not dispute the site values, except in the case of 74, where he maintained that the site value was insufficient, and he asked to be allowed to amend the notice of appeal with regard to that.

The land was bought in 1903 for £1,040, and the appellant divided it into eight plots, and erected substantial and well-built dwelling-houses. They were near the station, in a good district, and the appellant laid out tennis-courts on the opposite side of the road. All the gross and total values were served at the same figure, £700. The site values were : 60, £122 ; 62 and 64, £111 ; 66, £115 ; 68 and 70, £120 ; 72, £118 ; 74, £133. The gross value being the same in all, and the site value different, there was a different deduction in respect of the buildings. This was rather curious, because all the houses, except 74, were precisely similar, and the same amount was spent on each. The length and depth of all the frontages differed, so that it was difficult to see how the same gross value was arrived at in each case. No. 74 had a frontage of 30 feet 6 inches ; No. 60, of 24 feet 3 inches. According to the provisional valuations, 74 had an area of 25 poles 18 yards ; 60, of 14 poles 20 yards ; the difference was nearly 80 per cent., yet the total value in each case was put at £700, though considerably more had been spent on 74 than on 60, and it was let at £5 per annum more than 60. The cost

of the eight houses was in round figures £7,000, so that the total cost of land and buildings was roughly £8,000, yet the value put on the whole by the Commissioners was £5,600. The houses were completed in 1907, so in 1909 they were practically new. The gross rental of the houses was £400. The appellant was actually offered £840 each for four of the houses, and refused it. He could bring further evidence to check the values. In 1908 the appellant wished to effect a mortgage. Mr. Hickson made a valuation on behalf of the mortgagees of over £6,000, and a mortgage valuation did not, as a rule, take a very favourable view of the property. He did not argue that the cost of the building was the true measure of difference between gross and full site value in every case, but in this case the buildings in 1909 were newly erected, and cost was a good test.

G. O. Davies said that in 1909 the rents of the houses were : 60, £50 ; 62, £45 ; 64 and 66, £50 ; 68, £45 ; 70, £53 ; 72, £52 ; 74, £55. 60/72 cost £789 16s. 6d. each ; 74 cost £806 13s. 6d. The total cost was £7,285. In 1908 £4,000 was advanced on mortgage on the houses. In 1913 the local valuer called, and went through a part of 64 ; to his knowledge he went through no others, though asked to do so. The valuer had his figures with him, and witness said that the valuation was too low. He replied that the lower the bricks and mortar were valued, the better it would be, as there would not be so much death duty to pay, and it would not affect increment value duty. The actual cost of each house was £830, except 74, which cost about £50 more. In consequence of the low figures of the provisional valuations, the mortgagees had threatened to withdraw or decrease the mortgage.

Cross-examined : Apart from the size of the gardens and the width of 74, all the houses were the same. Till 1909 he had no difficulty in getting tenants. It was because the mortgagees called in a part of the mortgage money that he moved in the matter. The site value of the land plus the cost of the building should be taken as the total value. He refused to take £840, and pay full commission out of that sum. He filled up Forms IV. with relation to their date, October, 1910.

Henry Northcroft said that the premises were very well built, much better than usual for that class of house. He thought £1,040 was a reasonable price for the land. The valuations must differ according to the value of the different plots, and, in his opinion, they should be higher. He put the gross values at : 60, £864 ; 62 and 64, £853 ; 66, £857 ; 68 and 70, £862 ; 72, £860 ; 74, £885.

Cross-examined : He thought the houses were underlet at £50.

S. W. Hickson said that in August, 1908, acting for a trust mortgage, he made a survey and valuation of the property at £6,066, which was a strictly conservative view. He also made a report. All the houses were then let. The open ground and tennis-courts opposite made the property more desirable and marketable. He would have advised the owner that he ought to get £800 per house. There was no appreciable change in values between autumn, 1908, and spring, 1909.

For the Commissioners—

G. S. Wain, district valuer for N.W. Middlesex, said that the buildings

were practically similar, but the frontages and depths differed. He had inspected all the houses outside and one all over. He thought the provisional valuations were very full, but did not alter them; the value was sufficient for the best of the houses. He took 74 at a rental value of £50, which, deducting £8 for repairs, &c., at $16\frac{2}{3}$ years' purchase, gave a gross value of £700. The site he took at £5 5s. per foot frontage on an average width of 25 feet 6 inches, giving £133. He put 68/72 at £5 5s., and 60/66 at £5 per foot on the actual frontages. The slight difference in the sites would not affect the rents of such properties as these, so he showed no difference in the total values, which, in his opinion, were the utmost values on April 30, 1909. He thought £50 was a full rent.

Cross-examined: He had given a little too much on some of the houses. In property of this class additional land did not give additional value. The extra width of 74 did not make any practical difference in the gross value. There was no difference in values between autumn, 1908, and spring, 1909.

A. R. Peacey said that he had been over two houses and seen others outside. It was not a good neighbourhood; the approach was bad. In round figures he put the gross values of 60/66 at £650, viz., £46 per annum, less £8 repairs, at $16\frac{2}{3}$ years' purchase, and 68/74 at £675, viz., £48 per annum, less £8, at $16\frac{2}{3}$ years' purchase.

Cross-examined: He thought that a person buying for occupation might give a little more for 74 than for 60. His firm had let 64 for £50 per annum.

F. E. Biscoe said that he had inspected all the houses except 70. In 1909 the supply of this class of house was greater than the demand. His estimate of gross values was: 60/70, £635, viz., £45 per annum, less £7 5s., at $16\frac{2}{3}$ years' purchase; 72/74, £670, viz., £48, less £7 14s. at $16\frac{2}{3}$ years' purchase. He would not have expected them to fetch more.

Cross-examined: Up to 1909 building development was fairly brisk in this neighbourhood. Since 1909 capital values had gone down, rental values had gone up.

Mr. Shaw said that the very considerable stress laid on the cost showed that the evidence as to value was not strong. The cost of houses and land could not have any real bearing on their value. The question was what a purchaser would give. The criterion was rental value, and there was no dispute that it should be capitalised on the 6 per cent. tables. There was a difference as to the amount to be deducted for repairs, but that could safely be left to the Referee. There was a discrepancy as to the rents obtained in 1909: in 1910 such high rents were not being obtained; the highest was £50, and they ran down to £45, and, even so, four houses were empty. Mr. Hickson's assumption that the rents of 1909 would easily be maintained had proved wrong. The Commissioners' witnesses said that £50 was too high an estimated rental. As to the offer in 1908, they had to rely entirely on the appellant's memory; it might have been only a negotiation, and not a definite offer.

Mr. Allen, in reply, said that the Commissioners' case rested on the rent which might have been obtained in 1909. He did not rely on the appellant's memory only; Mr. Hickson's report was not recollection, and

his rental figures tallied exactly with the rental figures given by the appellant. Mr. Peacey himself had let 64 at £50, and the appellants had the agreements of 70 and 74, which agreed with Mr. Davies' and Mr. Hickson's figures. They had real rental value actually obtained, as against an estimated rental value. There was no suggestion that the cost of building was exaggerated. If the Referee's award were in favour of the Commissioners, no builder in the suburbs would be able to do any speculative building. Cost so soon before 1909 was strong evidence of total value.

Awarded: That the items numbered 1 and 2 in the provisional valuations of 60/72, Marlborough Hill, are sufficient, and that the costs incurred by the Commissioners of Inland Revenue in connection with these appeals be paid by the appellant.

That the gross and total values of 74, Marlborough Hill, are insufficient, and should each be increased to £725.

For the appellant: William Allen, instructed by Crundall & Co.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

[Appeal pending.]

Before H. W. BRUTON, ESQ., Referee, 24th June, 1914.

THE WILTS AND DORSET BANKING COMPANY *v.* THE COMMISSIONERS
OF INLAND REVENUE.

PROVISIONAL VALUATION—ASSESSABLE SITE VALUE—DEDUCTION
FOR GOODWILL—FINANCE (1909-10) ACT, 1910, s. 25 (4) (D).

Mr. Rawlence said that the appeal was against an amended provisional valuation, and was a rather peculiar case. It arose under Section 25 (4) (d), under which the appellants claimed an allowance for the circumstances under which they purchased three shops, 6, 7, and 8, Dyer Street, Cirencester, and then demolished them to put up the present bank buildings. The ground of appeal was that the Commissioners had not made an allowance for goodwill. The bank gave an enormous price for the premises in order to obtain the site for their business. The Commissioners had assessed the bank site at from £1 to £2 per square yard more than the adjoining property. To prove that he wished to put in provisional valuations of adjoining property.

Mr. Shaw objected that evidence-in-chief of other specific properties could not be given. The sites of this and adjoining property were all taken on the same basis, depending on the depth and length of frontage. The bank had a large frontage in comparison with its area. This case

might go further, so they ought not to have anything in the nature of evidence which would not be considered evidence in a higher Court.

Mr. Rawlence said that he was prepared to go on with the case, without prejudice to his point as to the admission of other provisional valuations. The premises were bought in 1897-8 at a total cost of £4,660. No. 8 was subject to a lease for 21 years from March 25, 1892, at £60 per annum, and when the bank was built the lessee had a new shop, which was part of the bank premises. Originally 6 and 7 had been valued as the bank, and 8 separately, but by agreement, under the amended provisional valuation, all were valued together. The total value was increased from £8,470 to £9,320. The assessable site value under the first two valuations was £1,900; under the amended valuation, £1,839, the difference being arrived at by an allowance of £61 for redemption of land tax. That worked out at £3 11s. 6d. per square yard, which, though in view of the price paid it was difficult to prove, was excessive and beyond the price paid for other property in the district. In this value the district valuer had included a certain amount of goodwill, which ought to have been written off to bring the site down to the level of an ordinary shop in the square. The district valuer had in a way admitted this, as, though the site cost £4,660, he had valued it at £1,839, so that £2,821 had already been deducted for goodwill. That was not sufficient by £872, as the site value should be £967. Goodwill was defined in *Commissioners of Inland Revenue v. Muller and Company's Margarine, Ltd.* (1901), A. C., 217. Position was to be taken into consideration. The market square was the main place of business, and that was why the bank paid the high price. The bank must be eliminated altogether, and the site value put at what the ordinary public would give for the land. In *Catherine Walker v. Commissioners of Inland Revenue* the occupier paid a big price to keep himself in the property; in this case an outsider paid a big price to get into the property, but the principle was the same.

Mr. Shaw said that the appellants' case was that where the bank had to purchase buildings which were of no use to them, in order to get a site, and then pulled them down, the value of the buildings must have gone into the goodwill; in other words, if a person, to carry on business at a particular site, paid more than the land was worth, that extra price must come off as goodwill to get at assessable site value. To obtain a deduction under Section 25 (4) (d) one had to show that the value was included in total value, and that the amount sought to be deducted was directly attributable to goodwill. "Goodwill" was a somewhat loosely used term, and it was a misconception of its meaning which had led to the present claim. The bank would have to show that the sum they claimed was directly attributable to goodwill; the mere fact that they had to pay more than the bare site was worth did not in any way help them to establish that. In *Commissioners of Inland Revenue v. Muller & Company (supra)*, the question was whether goodwill can be locally situate, and if so, whether it was situate abroad or in England, and Lord Lindley pointed out that goodwill varied with the business. Goodwill was only the probability that the old customers would continue to resort to the old place. (*Crutwell v. Lye*, 17 Ves., 355.) The nature of goodwill depended largely on the

nature of the business carried on. (*Trego v. Hunt* [1896], A. C., 7.) If a business was carried on at certain premises and the business was sold, the goodwill undoubtedly attached to some extent to the premises, but in this case the appellants would have to say that it was of the greatest importance to the bank that they should have these particular premises, whereas it would make no difference if the bank were at this particular spot or on the opposite side of the square. The commanding position did not depend on goodwill. The appellants must show that the business was such that if they went anywhere else their customers would not come to them; also that the site was not worth the amount paid by the bank to anyone else to carry on a different business. He suggested that goodwill was non-existent in these premises. The only goodwill applicable under Section 25 (4) (d) was local goodwill. Customers went to a bank as a bank, and if the bank moved they would still go to it. Under the section the onus of proof was on the appellants. All the sites had been valued to a certain depth at per foot frontage, and behind that at per square yard. This site was dealt with on its merits.

Mr. Rawlence, in reply, said that the Commissioners had allowed the cost of the buildings, less £200, but a difference of the cost of the buildings did not bring them back to a site value similar to surrounding sites. The bank took the site to attract new customers. Lloyds Bank had paid £2 per share to get hold of the Wilts and Dorset Bank shares, so there must be goodwill somewhere attached to a banking business.

Awarded : That the assessable site value of the property is £1,633.

For the appellants : E. A. Rawlence.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before P. F. TUCKETT, ESQ., *Referee*, 9th July, 1914.

G. D. DEUCHAR v. THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—GROSS VALUE—SITE VALUE—FINANCE
(1909-10) ACT, 1910, s. 25.

Mr. Allen said that the appeal was against three amended provisional valuations of three warehouses, 51, 52, and 53, St. Andrew's Road, South Hackney, on the ground that the gross and full site values were too low, and that the areas shown were incorrect. The Commissioners' figures were No. 51, gross value £590, full site value £155, difference £435; 52, gross £590, full site £150, difference £440; 53, gross £590, full site £165, difference £425. The amendments asked for were : No. 51, gross £675, full site £400, difference £275; 52, gross £675, full site £375, difference £300; 53, gross £675, full site £385, difference £290; in

respect to the areas : 51, 749 feet instead of 725 feet, and 52, 762 feet instead of 700 feet. The area of 53, 780 feet, was correct. By Section 26 (1) the Commissioners had to find the total and site values of each piece of land in separate occupation. That meant that they had to find the value of the whole site of all the three warehouses, but they had not done so. Therefore it would be necessary for the Referee to give an award on the point, increasing the area of two of the sites. Otherwise, when surrounding hereditaments were valued, there would be a small piece missed out altogether as of no value, or, at any rate, the value would not be shown in the provisional valuations served on the appellant.

Mr. Shaw said that he did not object to the procedure, but a provisional valuation was not conclusive as to the area, which need not be shown. Where a piece of land had no defined boundaries, and the wrong areas were given in the provisional valuation, it might be misleading, but where the boundaries were defined it could not be so.

Mr. Allen said the warehouses were situate on the Regent's Canal, which made the sites for the purpose for which they were used particularly valuable. There were no buildings, thus giving additional light, and there was access to the back which might be of great value, and certainly would be taken into consideration by a purchaser. The difference that the Commissioners had taken between the value of the land as it stood and the divested value was excessive. The land value was represented by the value of the site. The warehouses were worth a rental of £50 a year each, and from that he deducted one-sixth for repairs, &c., leaving a net rental of £42. Witnesses would say that $17\frac{1}{2}$ years' purchase was the proper multiple to apply. That gave a total of £735, but he only asked for £675, as £60 had been expended in putting the premises in a good state of repair since the date of valuation. With a stripped site one should take 20—25 years' purchase.

E. H. P. Eason said he bought the property in 1865, and had known the property for a number of years. On his recommendation an objection was made against the provisional valuations. The warehouses had four floors, and entrances on to the towing-path of the canal and St. Andrew's Road. Windows of three floors overlooked the canal, while the ground floor had a skylight. In St. Andrew's Road there were windows on every floor. There was an eastern light on the top floor overlooking the adjoining property. The buildings were substantial. In each case he put the rental value at £50, and deducted one-sixth, £8, to find the rateable value, £42. That he capitalised at $17\frac{1}{2}$ years' purchase, £735, and deducted £60 for dilapidations, leaving £675 as the gross and total value of each unit. The site value he put as follows : No. 51, 749 feet, at 10s. per foot, £374 ; No. 52, 762 feet, at 10s. 9 $\frac{3}{4}$ d. per foot, £412 ; and No. 53, 780 feet, at 10s. 8d. per foot, £416. Wherever there were party-walls that was an amenity and added to the value of the land. It lessened the cost of the building to be put on the stripped site, because a man would only have half the thickness of the wall to build. There would also be increased floor space, and a builder would have the benefit of the excavations which remained after the foundations of the present buildings were removed in order to divest the site. In No. 51 there was a window in the east wall,

and a freeholder would give £20 to get rid of it. A purchaser would attach a value to the canal in front.

Cross-examined: 17½ years' purchase was not too high. He had been deputed to buy a site immediately opposite for Alexandra Wharf at a higher price. He could not give any other instances where warehouses on the canal side had been valued at 10s. per foot for the purposes of sale.

E. W. Eason said he prepared the schedule of dilapidations, and estimated them at £60 for each property. He confirmed the valuations of the property given by the last witness.

Cross-examined: The value of the bare site was increased by more than £150 by reason of the party-walls making excavations unnecessary. He could not say whether the excavations would be suitable for buildings which might be put up, but they certainly added some value to the land. In valuing the property as a whole, the value of the party-walls disappeared, but other values would arise.

For the Commissioners—

H. Ovenden, district valuer for London (East), said that for gross and total value he took a rental of £50 a year, which worked out at 4d. to 6d. per foot floor space. He allowed £8 for repairs and insurance, leaving a net rent of £42, which he capitalised at 14 years' purchase, say £590. In his opinion 17½ years' purchase was too high. For site value he took the superficial area at 4s. 2½d. per foot. In consequence of the areas being altered his figures would have to be adjusted. His figure of 4s. 2½d. per foot was supported by transactions in the neighbourhood. He had valued 75 per cent. of the waterside property in the district, and he could not recollect a case where he had gone above 4s. 2½d. There was nothing to support 10s. per foot. Alexandra Wharf was a different case altogether; it was bought for a special purpose.

Cross-examined: In estimating the site value he considered the frontage on the canal. He did not take the rights of light into consideration. Party-walls made no difference to the value. There was no demand for small warehouses of that kind, though the site was suitable for warehouses. The buildings might with care stand for some time. The Factory Acts had reduced their value.

C. F. Hall said the waterside frontage was of no value. It extended to about 20 feet, which would not take an ordinary barge. The only value of the canal frontage was the light. His valuations were: No. 51, gross value £480, site value £125, difference £355; 52, gross £540, site £126, difference £414; 53, gross £540, site £130, difference £410. He had taken the site value at 3s. 4d. per foot.

Cross-examined: £480 worked out at 15 years' purchase.

G. E. Nye said a fair rent of the property was £42, which he capitalised on the 7 per cent. table, £600 gross value. He agreed with Mr. Ovenden's figures for site value.

Mr. Shaw said that the main question was one of site value. The evidence given by the witnesses for the appellant was remarkable, because of the high figures for amenities, such as being near the canal, party-walls, and excavations. As to the advantage of being near the canal there was a conflict of evidence. The party-wall value was based on entirely

fallacious reasoning. Excavations would be a disadvantage in the majority of cases, while on the other hand their value would be very trivial. If the Referee found in his favour, he asked for costs.

Mr. Allen objected to the Commissioners asking for costs when they had admitted that they were wrong in the areas given in the provisional valuations.

During the hearing the areas of Nos. 51 and 52 were agreed at the appellant's figures.

Awarded: No. 51, total value sufficient, site value increased to £190; 52 and 53, total values sufficient, site values increased to £200.

For the appellant: William Allen, instructed by Brown, Son & Vardy.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before JOHN LOPDELL, ESQ., *Referee*, 15th July, 1914.

PATTERSON AND COMPANY, LIMITED, *v.* THE COMMISSIONERS OF
INLAND REVENUE.

INCREMENT VALUE DUTY—"OCCASION" THE GRANT OF A LEASE
—SITE VALUE ON OCCASION—ALLOWANCE FOR TRANSITORY
NATURE OF LETTING AND INSECURITY OF THE RENT—
EXPENSES WHERE APPELLANTS SUBSTANTIALLY SUCCEED—
FINANCE (1909-10) ACT, 1910, SS. 2 (2) (B) & 32 (1).

The lands forming the subject of this appeal were the premises No. 17, Dame Street, in the city of Dublin, known as the Dame Street Picture (Cinematograph) House, having a frontage of about 21 feet. The premises were stated to have been leased by Mr. Orpen to the appellants by a lease dated March 28, 1912, for a term of 200 years with a covenant to expend £600. The appellants executed a sublease to the Dame Street Picture House Company, Limited, dated November 13, 1912, for a term of 50 years at a rent of £350 per annum with a covenant to expend £2,000. A provisional valuation was served, dated June 18, 1912, showing gross and total value £3,600, value of buildings £860, original assessable site value £2,740. This valuation was objected to. On September 3, 1913, a notice of increment value duty on the "occasion" was served stating the value of the land £3,600, buildings £860, and site value on "occasion" £5,440, which was objected to on behalf of the appellants. An amended provisional valuation was served, dated November 6, 1913, showing gross and total value £4,000, value of buildings £1,260, and original assessable site value £2,740. An amended increment value duty claim, dated January 9, 1914, was served showing the value of the land on the occasion £7,000,

value of buildings £1,260, and site value on occasion £5,740. That assessment was the subject of the appeal.

The appellants served a notice of their intention to appeal against the assessment of increment value duty and the refusal of the Commissioners to make an allowance in respect of the transitory nature of the letting and insecurity of the rent. The particulars of the appellants' grounds of appeal were as follows :—

- (1) The assessment is made on a totally incorrect basis, both of law and fact: (a) It is made on the assumption that the site value of the land on the occasion of the granting of a lease on November 13, 1912, was increased in value and now exceeds the original site value, whereas in fact there has been no such increase. (b) In arriving at the value of the land on the "occasion" the Commissioners have assumed that the amount which the fee simple of the land if sold at the time in the open market by a willing seller would realise is twenty times the gross amount of the rent secured by the said lease or the sum of £7,000, whereas the amount which could be so realised is about the sum of £4,000.
- (2) The value of the land on the "occasion" as ascertained by the Commissioners is too high, and should be reduced to the sum of £4,000. The site value on the "occasion" as ascertained by the Commissioners is too high, and should be reduced from the sum of £5,740 to the sum of £2,740. The value of the buildings as ascertained by the Commissioners is too low, and should be increased by the Commissioners to £1,500, and the assessment should be amended in conformity with the reductions and increase.
- (3) It has been pointed out to the Commissioners that the letting made by the lease of November 13, 1912, is of a transitory nature, that there is no security for the rent beyond five years, and that when the demand for picture houses declines the rent will revert to the true letting value of about £200 per annum, but disregarding the statute the Commissioners have refused to take into consideration these special circumstances, and have insisted upon regarding the rent reserved by the lease of November 13, 1912, as if it were a well-secured ground rent.

At the hearing it was agreed that the value of the buildings should be fixed at £1,260.

The Referee in his judgment said :—

Having inspected the lands, having considered the evidence, and having regard to the provisions of Section 2 (2) (b) and Section 32 (1) of the Finance (1909-10) Act, 1910, I am of opinion, and so decide, that the value of the land on the occasion is £4,812, and that the site value on the "occasion" is £3,552. As the appellants have substantially succeeded in their appeal, I award that the sum of £32 0s. 3d., expenses incurred

by them in connection with the appeal, should be paid by the Commissioners of Inland Revenue.

For the appellants : A. C. Meredith, K.C., instructed by R. W. Meredith & Son.

For the respondents : B. Collins, of the Solicitor's Department, Inland Revenue.

Before JOHN LOPDELL, ESQ., Referee, 15th July, 1914.

PAUL ASKEN & SON, FOR O'NEILL ESTATE *v.* THE COMMISSIONERS
OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—PLEASURE GROUNDS—DEVELOPMENT
WOULD INJURE AMENITY OF THE RESIDENCE—WITHDRAWAL OF
APPEAL—EXPENSES TO COMMISSIONERS OF INLAND REVENUE.

The appellants served notice of appeal against the assessment of undeveloped land duty on the pleasure grounds surrounding the house known as "Ardburgh," situate at Dalkey, in the county of Dublin. The grounds of the appeal were that the pleasure grounds could not be developed or let for building purposes without serious injury to the amenity of the said house as a residence. The appeal was withdrawn by the solicitors acting for the appellants (Messrs. Dalton & Collins).

The Referee : As the appeal has been withdrawn, I award that the sum of £2 2s. expenses should be paid by the appellants to the Commissioners of Inland Revenue.

For the appellants : Dalton & Collins.

For the respondents : Frank Martin, Solicitor for Inland Revenue.

Before J. G. DREW, ESQ., Referee, 8th September, 1914.

COLONEL CAREY AND ANOTHER *v.* THE COMMISSIONERS OF
INLAND REVENUE.

REVERSION DUTY—PURCHASE OF REVERSION BY LESSEE—DATE
OF DETERMINATION OF LEASE—FINANCE (1909-10) ACT, 1910,
s. 13—REVENUE ACT, 1911, s. 3 (3).

Mr. Radcliffe said that the appellants were the trustees of the Carey Estate, owning considerable property in the district of Torquay, and they

and their predecessors had been in the habit of granting long leases. Among these they granted the lease in question by an indenture dated April 15, 1880, for a term of 99 years from March 25, 1864. It was a lease of stabling and stores. On March 13, 1913, the then lessee, Mr. Smith, entered into a contract for the purchase of the reversion, and the conveyance in pursuance of that contract was executed on April 5, 1913. An assessment to reversion duty was made on April 9, 1913, and on May 5 the appellants appealed. There was no dispute as to the value of the property. The question for the Referee to decide was the date when the lease determined. After March 25, 1913, the lease would have less than 50 years to run. He submitted that the lease determined, within the meaning of the Revenue Act, 1911, Section 3 (3), before March 25, 1913, and that the appellants were therefore exempt from reversion duty as the lease had over 50 years to run, and the total value of the property was less than £500. The Act spoke of "the time of the determination of the lease," and did not use technical terms such as "merger" or "determination at law." There was no definition of "determination" in the Act, but it must mean either determination in law or in equity, because the Revenue Acts recognised equitable release and equitable rights. He referred to *Attorney-General v. Dodd* (1894), 2 Q. B., 150; *Attorney-General v. Johnson* (1907), 2 K. B., 885; *Commissioners of Inland Revenue v. Earl Derby*, 109 L. T., 827. The intention of the parties, as shown by the documents, was very material. His first point was that this lease was determined as far back as September 29, 1912, and that the consideration for the purchase of this reversion was the payment of a rent-charge of £1 a year, which accrued as from that date. This was the contract entered into on March 13, 1913, between the appellants and Mr. Smith. The contract referred to two properties, one being the property in question, and one clause stated that the residue of the terms should be merged or extinguished, and that the consideration for the purchases should be the creation of a perpetual rent-charge of £12 per annum (on the two properties), accruing as from Michaelmas, 1912. Another clause stated that all outgoings borne by the vendors, as reversioners, should be discharged by the vendors up to the date when the rent-charge should accrue, and thenceforward all outgoings should be borne by the purchasers, and the vendors should be entitled to the rents reserved up to the date on which the rent-charge accrued. There was also a clause as to apportionment. The conveyance followed which carried the contract into effect. In the conveyance a period of restriction was mentioned to avoid the perpetuity rule. That period of restriction was on the lives of certain persons living at the date of the creation of the rent-charge. Following upon that the purchaser covenanted to perform covenants distinct and entirely different from the covenants in the lease. As the result of this contract and conveyance they had a rent-charge created commencing from September 29, 1912, and covenants which would be enforced from that date. If the lease was not determined on September 29, 1912, the effect would be that they would have a lease running under certain rents with one set of covenants, and under this document they would have another set of covenants and another rent-charge. It was clear that it was the intention of the parties that the

lease should be determined on September 29, 1912. If the Referee held that this lease did not determine on September 29, 1912, he submitted alternatively that the lease was determined on the signing of the contract, or, at any rate, directly any conditions under the contract were complied with. When there was an agreement of which specific performance could be ordered directly any outstanding conditions were fulfilled, the purchaser became the beneficial owner of the property. In this case there were certain conditions to be fulfilled, such as delivery of abstract, requisitions, producing certain leases, and endorsement and approval by the vendor. These conditions were complied with by March 15, 1913. He produced an affidavit made by Mr. Findeison, who acted for both parties, showing that the abstract of title was verified and prepared, and that an outstanding mortgage was disclosed with a bank. The purchaser gave an assurance that the bank would surrender the interest, which they did in May, 1913. The requirements of the contract were complied with on March 15, 1913, except that the mortgage was not freed until later. In effect the affidavit said all the conditions were complied with by March 15, and consequently by that date there was an agreement for the purchase of the reversion, of which specific performance could be enforced. Therefore he submitted that by that date the lease had determined. The nearest case in point was *Commissioners of Inland Revenue v. Earl Derby (supra)*. The point there dealt with was the determination of a lease and a contract for a new lease. Here it was different, as the old lease was determined directly an enforceable contract for a new lease was entered into. This case of an enforceable contract for the sale of a reversion on terms entirely inconsistent with the terms of the old lease was much stronger.

Mr. Shaw said that the only issue was whether this lease was determined on or before March 25, 1913. The case was governed by the decision in *Commissioners of Inland Revenue v. Earl Derby (supra)*. He might paraphrase that decision by saying that a lease did not determine and a new lease come into operation until all the conditions set out in the contract has been fulfilled. In other words, the purchaser had to comply with all conditions in the contract before he could go to the vendor or his lessor and say he was entitled to his lease. If the Referee referred to the contract dated March 13, 1913, and the actual conveyance, which was not executed until April 5, 1913, he would see that there were a considerable number of conditions that had to be complied with by both parties to the contract. There was the usual condition as to showing a good title, and the whole of that condition was material. One of the conditions required certain fees to be paid, and all of them had to be fulfilled before the purchaser would be entitled to his conveyance. The suggestion of the affidavit was that by March 15 all the material conditions had been actually fulfilled. He did not suggest that some of these conditions had not been fulfilled, but the same solicitors were acting for the purchaser and the vendors, and that made it more difficult to say exactly what took place. It did not appear clear from the affidavit that all the conditions of the contract had been substantially fulfilled. In the first place there was the abstract, and it was a question whether verification did not take place before the date of this contract. If that were so, and the title had been

verified in connection with some other transaction, that was not a fulfilment of the condition. In the second place, with regard to the abstract of the leasehold title which the purchaser had to supply, the affidavit said that the abstract of title to the leasehold interest was prepared on March 15, 1913. That was only part of what the purchaser had to do. He had to deliver an abstract, and had to produce to the vendors' solicitors all the deeds and documents relating to the leasehold title. The affidavit was silent on that point. He submitted that the affidavit did not go far enough. To convince the Referee the appellants must show that all conditions under this contract which had to be carried out had in fact been carried out on some date before March 21, 1913. The affidavit did not go far enough to show that these conditions had been carried out. The affidavit specifically mentioned the outstanding mortgage, and stated that the surrender of the interest free from the banker's mortgage was not made until some time afterwards. It was something more than a matter of conveyancing. No one would complete without that surrender being carried through, and the purchaser could not have insisted on getting his lease. He submitted that, looking at the contract and the various conditions in it, and looking at the affidavit (which he accepted as evidence), the affidavit did not show that all the conditions in the contract had been complied with. It showed that some had been fulfilled, but did not show that the wording of the contract and the strict conditions in it had been fully complied with. One had here solicitors acting for both parties, familiar with the state of the title. Possibly in their discretion they did not insist fully upon the conditions in the contract, and they proceeded to completion without having insisted on the purchaser and the vendors complying with the full conditions. So far as the purchaser and the vendors were concerned there was no objection. But the point was that, until these conditions had been actually complied with, the vendors could not be compelled to complete. The contract was not carried out strictly, and the result was that there was no determination of the old lease until actual completion on April 5, 1913.

Mr. Radcliffe, in reply, said that it was for the Referee to say whether the affidavit satisfied him that the conditions had been complied with. Paragraph 3 of the affidavit distinctly said that the requirements of Clause 12 were complied with on March 15. As to the outstanding mortgage, where a property was contracted to be sold, and was subject to a mortgage, specific performance would not be refused merely because there was an outstanding mortgage, but an order would be made for specific performance subject to the mortgage being got in.

Awarded: That the date of the determination of the lease was March 15, 1913; that the case is within the exemption contained in 1 Geo. V., c. 2, s. 3 (3), and no reversion duty can be charged.

For the appellants: J. Radcliffe, instructed by Dymond, Findeison & Toswill.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before THOMAS BINNIE, ESQ., *Referee*, 23rd September, 1914.

MRS. MARION HOGG'S REPRESENTATIVES *v.* THE COMMISSIONERS
OF INLAND REVENUE.

PROVISIONAL VALUATION—SUFFICIENCY OF VALUATION—ORIGINAL
ASSESSABLE SITE VALUE—MINUS VALUE—GOODWILL OR OTHER
MATTER PERSONAL TO OWNER AND OCCUPIER—FINANCE (1909-10)
ACT, 1910, 10 EDW. VII., c. 8, ss. 25 (4) (A) (D) & 27.

Circumstances in which held that allowance fell to be made for goodwill or other matter personal to owner and occupier.

The subject of this appeal was a small piece of ground in Kilbirnie, Ayrshire, extending to 25½ poles. At April 30, 1909, the buildings on the ground consisted almost entirely of wooden and corrugated iron structures which were used by Mrs. Hogg as stables and sheds for carriages, in connection with the hiring business carried on by her as an adjunct to an hotel, of which she was also the proprietrix, situated in a neighbouring street. The ground was burdened with an annual feu-duty of £13 ls. The parties were agreed that in view of the inadequate security for the feu-duty its capital value was only £70. Mrs. Hogg died in October, 1910, and at that time the principal value of the property for estate duty purposes was returned as nil. In June, 1912, the appellants sold the property for £275 to a firm of manufacturers who owned adjoining ground.

In the provisional valuation the Commissioners adopted the following figures, viz., gross value £70, difference between gross value and value of fee simple divested £19; feu-duty £70; full site value £51; total value nil, assessable site value minus £19. The appellants appealed on the ground that these values were insufficient, and claimed that the original total value should be £205 and original assessable site value £5.

When the Referee inspected the property the ground had been cleared of all buildings, and he had to form his opinion of their value from information as to their structure and character supplied by the parties. At the subsequent hearing before the Referee no formal evidence was led. The Chief Valuer did not dispute the accuracy of the information supplied by the appellants' agent.

The appellants maintained that the property had been of special value to Mrs. Hogg as an adjunct to her hotel, and that the high price paid by the purchasers included compensation (estimated by appellants at £100) for the loss of goodwill sustained by them through parting with the property. They also claimed that the value of the buildings was £100.

The Commissioners maintained that the figure of £2 per pole was a fair value for the ground apart from the feu-duty, and they founded on the before-mentioned return for estate duty purposes in 1910.

The Referee's award is as follows :—

Having in presence of parties inspected the property forming the subject of the appeal, having thereafter heard parties, and having considered the evidence adduced, and the whole productions, I decide that the values stated in the provisional valuation appealed against, a copy of which is annexed, are insufficient; I further decide—

| | | | | | | |
|---------------------------------------|-----|-----|-----|-----|-----|------|
| That the gross value is | ... | ... | ... | ... | ... | £170 |
| That the full site value is | ... | ... | ... | ... | ... | £130 |
| That the total value is | ... | ... | ... | ... | ... | £100 |
| And that the assessable site value is | ... | ... | ... | ... | ... | Nil |

I have allowed the following deduction in arriving at full site value from gross value :—

| | |
|--|-----|
| Difference between gross value and value of the fee simple of the land divested of buildings, trees, &c. | £40 |
|--|-----|

I have allowed the following deduction in arriving at total value from gross value :—

| | | | | | | | |
|---|-----|-----|-----|-----|-----|-----|-----|
| Feu-duty, ground annual, or tack-duty, as agreed by parties | ... | ... | ... | ... | ... | ... | £70 |
|---|-----|-----|-----|-----|-----|-----|-----|

I have allowed the following deductions in arriving at assessable site value from total value :—

| | | | | | | | |
|--|-----|-----|-----|-----|-----|-----|-------------|
| The same amount as is deducted for the purpose of arriving at full site value from gross value, as above | ... | ... | ... | ... | ... | ... | £40 |
| Goodwill or other matter personal to the appellants as owners or occupiers | ... | ... | ... | ... | ... | ... | £60 |
| | | | | | | | <u>£100</u> |

The Referee found the appellants entitled to expenses.

For the appellants : McCosh, Lusk & Gordon, Dalry.

For the Commissioners : Alexander Blair, Chief Valuer for Scotland.

Before SIR ALEXANDER STENNING, *Referee*, 18th October, 1914.

VISCOUNT IVEAGH *v.* THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—GROSS VALUE—SITE VALUE—
FINANCE (1909-10) ACT, 1910, s. 25.

Mr. Konstam said that the case was a simple one of valuation, without complications, and concerned a house, 7, Longridge Road, Earl's Court,

two or three minutes from Earl's Court Station. The figures of the provisional valuation were : Gross value, £965 ; deductions to arrive at full site value, £645 ; full site and assessable site values, £320. Those values were too low. The house was built in 1874, and was a high house, with four stories and a basement, covering only a small part of the site, which had a frontage of 20 feet and a depth of 100 feet. The site was not fully utilised, the back-yard being practically useless, and site value must be approached from the point of view of the fullest utilisation. A modern house with greater depth would be more convenient, and there was a demand in the neighbourhood for vacant sites for more modern buildings.

H. A. Glover said that his firm had managed this estate for ten years before 1902, and since 1902 they had been surveyors to the estate. The site in question was not covered to the best advantage. It was a great drawback to have four flights of stairs. They constantly received inquiries for vacant land to put up a house with a ground floor and two upper floors. There was plenty of land to leave air space. The gardens at present were never cultivated. In 1909 he estimated the rent at £100, which, deducting £20 for repairs, at 14 years' purchase, gave a gross value of £1,120. The site value he put at £500, viz., 2,000 feet super, at 3*d.* per foot per annum. The class of house wanted would cost about £1,200, and could be let on lease at £125 per annum. Allowing the building tenant 8½ per cent. on his outlay, £100, left £25 ground rent, which unsecured at 20 years' purchase, again gave a site value of £500.

Cross-examined : He did not know at what rent the premises were at present let. They would have let at more than £80 in 1909. He thought £90 would be the best rent to be expected at present ; that would be as two maisonnettes, which would necessitate an outlay of £300 in alterations. A deeper house would not interfere with the light of adjoining houses. His figure of £500 for site value was higher than the £434 asked for in the notice of appeal. It was unfair to estimate site value on per foot frontage in this district. Depth had a very important bearing.

W. H. Marler said that he knew the property well ; he confirmed the evidence of Glover generally.

Cross-examined : He did not know the present rent of the house. He had estimated the site value at 3*d.* per foot super before seeing Glover. He had not seen the inside of the house, but had inquired into the state of repair in 1909. He had not considered the question of light ; he took that from Glover.

J. S. Matthews said that he had let the house twice ; in 1911 it was let at £80 to a private tenant in preference to letting it to a boarding-house keeper at £90. In 1912 the house next door was let at £100 on a 5-years agreement ; it was a little better fitted than this house. The leasehold interest of No. 5 was sold in 1905 for £1,250, the ground rent being £14. The site was worth £25 per foot frontage. With a non-basement house costing £1,200, one would get a rent of £130.

Cross-examined : No. 5 had a marble hall, better mantelpieces, and one parquet floor. No. 7 was redecorated in 1911 at a cost of £90-100. He agreed with Glover as to the gross and site values.

For the Commissioners—

E. W. Fagg, district valuer for Brompton, said he valued the property as follows: Rental value on agreement, £80; deduct 20 per cent. for repairs, &c., £16, net rent £64; capitalised on the 6 per cent. table, 16·6 years' purchase, £1,062; deduct £100 for necessary repairs, £962, say £965. Site value: £16 per foot frontage, £320. He did not agree with estimating the site value of this class of property by so much per foot super.

Cross-examined: He got the rental value from an estate duty account rendered in 1912. He believed that £100 was the rent in 1909. In the estate duty negotiations it was ascertained that £100 was spent before a tenant could be obtained at £80 per annum. He had scaled the depth before putting £16 as the value per foot frontage. He would not have put more if the depth had been greater, but would have put less if a depth of less than 60 feet had been available for building. A few feet more or less of depth did not affect the value of the frontage. No builder could afford to give more than £16 per foot frontage.

F. G. Bonnin said that he had had business with houses in this road, and had inspected this house. He estimated the value in 1909 at £956, based on a rent of £80. He had during the last two or three years let houses somewhat better than this at that rent. He put the site value at £300, a fair ground rent of £15 at 20 years' purchase, or 20 feet frontage at £15 per foot.

Cross-examined: Probably in 1909 the land would be worth a little more than in 1874.

M. S. Rogers said that the market value in 1909 was about £950, viz., rental value £85, less £20 for repairs, at 16 years' purchase £1,040, less £100 for necessary repairs, in round figures £950. He had formed his opinion of the rental value independently of what it was let at then or later.* £320 was as much as the site was worth on a frontage basis, which he considered the correct basis in this case.

Mr. Shaw said that he had been led to believe that some question of principle was to be raised, but he failed to see that any such question could be raised in this case; it was purely a question of valuation. The Commissioners' witnesses based their figure of £16 per foot frontage on their experience. The appellant maintained that one must calculate site value on the basis of superficial area, but the Commissioners contended that in this case it ought to be calculated on the basis of frontage. The Valuation Department were interested in the decision of this case, as it might give them a guide as to the way in which to deal with other disputed valuations on this estate, of which there were a considerable number.

Awarded: That the gross value is £1,075, and the site value is £400, and that the costs of the appellant incidental to this appeal be borne by the Commissioners.

For the appellant: E. M. Konstam, instructed by Travers-Smith, Braithwaite & Co.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before HOWARD MARTIN, ESQ., Referee, 21st October, 1914.

THE ALMSHOUSE CHARITY OF ELIS DAVID *v.* THE COMMISSIONERS
OF INLAND REVENUE.

PROVISIONAL VALUATION—ASSESSABLE SITE VALUE—DEDUCTIONS
—EXCHANGE OF LAND—EXPENDITURE OF A CAPITAL NATURE—
FINANCE (1909-10) ACT, 1910, s. 25 (4) (B).

This was an appeal against the provisional valuation of a farm at Sanderstead, the property of the appellants, on the ground that the Commissioners had not allowed sufficient deductions in respect of works executed and expenditure of a capital nature under Section 25 (4) (b), in arriving at the assessable site value. In 1898 the Governors of the Charity had effected an exchange of land with adjoining owners, paying £263 7s. 6d. for equality of exchange, in order to make their property compact, and between 1898 and 1906 they had expended the sum of £900 to secure access to the property. In respect of this latter expenditure the Commissioners had allowed a deduction, but the appellants contended that a deduction should also be made under Section 25 (4) (b) in respect of the value attributable to the exchange of land in 1898. The Commissioners maintained that the exchange was not an expenditure of a capital nature incurred *bona fide* for the purpose of improving the land as building land, and that each of the parties to the exchange had received full value for the land given up.

Award: This appeal is in respect of the deductions to be made under Section 25, Subsection (4) (b) from total value to arrive at assessable site value in respect of the part of the total value directly attributable to works executed and expenditure of a capital nature incurred for the purpose of improving the value of the land as building land.

The land which is the subject of the appeal is one block of uncovered building land 68 acres 3 roods 21 poles in area, belonging to the Governors of the Elis David Charity, and situate in the parish of Sanderstead. The appellants proved that in 1898 the estate of the Governors at Sanderstead did not form one block, but consisted of separate fields (part of which is now included in the area which is the subject of the appeal, and part is outside it) intermixed with the fields of adjoining owners. It was also proved that in 1898 the Governors of the Elis David Charity and the adjoining landowners concerned arranged an exchange of land by which each owner obtained in exchange for intermixed fields a piece of land in one block, and that the Governors of the Elis David Charity paid in order to secure equality of exchange £263 7s. 6d. or thereabouts in addition to law costs and surveyors' fees, the amount of which was not stated. The clerk to the Governors proved that the exchange was effected in order to improve the value by making it possible to develop the land for building; and a copy of a schedule stating in detail the terms of the exchange was put in by him, which showed that the basis of the exchange was the value of the land as undeveloped building land.

It was further proved that at later dates, but before 1906, the Governors paid sum; amounting in the aggregate to £900 for certain strips of land necessary to be added to their estate in order to secure means of access to existing roads and facilities of drainage. It was proved that the appellants and the Commissioners have agreed that the gross value is £20,665, and that if no site value deduction falls to be made under the heading of works executed and capital expenditure in respect of the exchange of 1898, the deduction under that heading in respect of making of roads and obtaining access and drainage facilities is to be £6,888, and that it has been further agreed between the Commissioners and the appellants that if in addition to the site value deduction agreed to be made under the heading of works executed and capital expenditure in connection with the making of roads and obtaining access and drainage facilities such site value deduction is to be increased by a further amount in respect of the exchange of 1898, the total deduction under the heading is to be £12,399.

The decision on the appeal is that the improved value attributable to the exchange ought to be taken into account, and that the total deduction to be made in respect of works executed and capital expenditure which falls to be made under Section 25 (4) (b) is £12,399, and that the costs incurred by the appellants are to be paid by the Commissioners.

For the appellants: G. M. Hilbery, instructed by Marshall & Liddle.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before HOWARD MARTIN, ESQ., *Referee*, 10th November, 1914.

C. J. BRAKE v. THE COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY — EXEMPTION — LAND USED FOR BUSINESS, TRADE, OR INDUSTRY OTHER THAN AGRICULTURE—BUSINESS OF LAND DEVELOPER—FINANCE (1909-10) ACT, 1910, s. 16 (2).

Mr. Cox-Sinclair said that the appellant asked that the land in question should be declared exempt from undeveloped land duty. There was no contest as to figures. The question was practically wholly within Section 16 (2), and exemption was claimed on the ground that the land was used *bona fide* for the business, trade, or industry of a land developer, and for no other purpose. This point had only once been the subject of even indirect judicial reference, viz., in *Allen v. The Commissioners of Inland Revenue* (1914), 1 K. B., 327, and the question still remained open for decision. His argument was not quite the same as the argument in that case. Section 16 (1) imposed the tax on undeveloped land affirma-

tively, and land which did not answer the description in Section 16 (2) was to be deemed to be undeveloped land. The onus was on the appellant to show that the land was not undeveloped, but considering that the expression "deemed to be" was used, and that the Act was a taxing statute, the appellant's burden was discharged, certainly if he showed himself to be within the precise words of the subsection; and if the words used were in any way wanting in clearness, the appellant could rely on the general principle of construction of statutes to show that in view of the scope and intention of the Act he held land not intended to be taxed.

Charles J. Brake said that he should term himself a land developer. His principal office was at Fleet, and he had local offices in juxtaposition to various properties. He had estates at Fleet, Sandhurst, Crowthorne, Eversley, Yately, and Farnborough Park. None of these estates were in the nature of agricultural holdings, though in exceptional cases he let the feed of a meadow. It was mostly heath land or land which produced nothing agricultural. He had not been engaged in any other business since his father's death in 1905. All the estates formerly belonged to his father, and had been conducted in the same way as before his death. The properties were sold by instalments, about £1 per cent. per month. The instalments included 5 per cent. interest on the yearly unpaid balance. On completion the purchaser was handed a free conveyance. He obtained purchasers by advertisements, boards, and circulars, and had no outside agents. When land was obtained roads were made or maintained, the land was planned and plotted, the prices of the plots being shown on the plans. He had built houses for purchasers of land, the house and land being paid for by instalments. The whole work was controlled from the central office at Fleet, and he could furnish details of expenditure. The land was bought in 1896.

Cross-examined: He had made no road on the Crowthorne estate. The plots were covered with heath. Some land was not plotted when he got it. He had done nothing except plot it out. His expenses would be on offices, clerks, boards, advertisements, and the maintenance of roads. He had made no claim for a deduction under Section 16 (2) (b).

Mr. Kingdon said that he did not dispute that a business was carried on, that the appellant was a land developer, and that land developing was a business.

Evidence in support of the appellant was also given by Henry Brake, E. F. Carpenter, Edward Paice, Trevor Davies, J. F. Martin, and A. J. Nash.

Mr. Cox-Sinclair said that the statute had two objects: To impose taxation and to prevent the holding up of land. As it was a taxing statute he was entitled to ask that the utmost caution be exercised in its construction before the appellant was held under an obligation to pay the tax imposed by the section. Section 16 (1) imposed the tax, and in Section 16 (2) there were exemptions. Under Section 16 (2) (b) an owner in certain circumstances could claim a reduction in respect of roads and works executed, but no claim had been made by the appellant, because he contended that he was a person engaged in a business other than agriculture, and therefore exempt under the first part of Section 16 (2). It had

been conceded by the Commissioners that the appellant carried on a business. There was nothing in the nature of holding up; every effort was made to dispose of the "business," and the whole of a detailed system was continuously in operation for the purpose of splitting up and disposing of the land.

It was for the Commissioners to prove that the land had been held up. In construing Subsection (2) it had been too hastily assumed that undeveloped land meant land not developed by the erection of dwelling-houses or business buildings upon the land itself. The statute said "developed by the erection of houses and buildings"; it did not say upon that land. Land not built on might be developed by buildings upon adjoining land. He contended that land used for any business, trade, or industry covered land used as stock-in-trade, adjunct, apparatus or sample for the business of a land developer.

Mr. Kingdon said that all the plots on the appellant's land were, by request, valued separately. The undeveloped land duty sections of the Act were quite clear, and, applied in their actual meaning, had an intelligent legislative plan from which there was no reason to depart. He did not rely on holding up of land. He conceded that the appellant was carrying on his business in a prudent manner, but it was clear that he was just the person who would hold up land, and needed the spur of this particular tax to prevent him having recourse to a practice which would undoubtedly be profitable to him. His case rested on Section 16 (2), and he suggested that the words "used *bona fide* for any business, trade or industry other than agriculture" involved physical user. In the present case they had to deal with each plot separately, and consider the way in which it was used within the meaning of the section, and whether the appellant in his business was using each one of the plots of land. All the kinds of user mentioned in the definition of "agriculture" in Section 41 denoted physical user. According to the appellant's argument if the land was being used for agriculture, the appellant being prepared, when a man came along and gave him a high enough price, to sell it, it would still be his stock-in-trade, and he would be entitled to claim exemption from duty. Section 16 (2) (b) was very important. Mr. Justice Scrutton in *Allen v. The Commissioners of Inland Revenue* (*supra*) in effect said: "I find 'under Section 16 (2) that if land is actually used *bona fide* for business 'it is exempt, and I find under Section 16 (2) (b), where it is dealing with 'a precisely similar thing, the statute actually treats it as not being used 'merely because it is part of stock-in-trade or included in a scheme of land 'development.'" Section 16 (2) referred to actual user, and Section 16 (2) (b) showed that actual user was required for Section 16 (2). There was no evidence of actual user in this case. The plots of land were the property of the appellant, and he hoped that someone would come along and buy them. From beginning to end he did not touch the land, and there was no physical user in connection with the business, nor was actual user a necessary part of the carrying on of the business. He adopted the argument of the Solicitor-General in *Allen v. The Commissioners*.

Award: These appeals are against the assessment of undeveloped land

duty under Part I. of the Finance (1909-10) Act, 1910, in respect of 273 plots of building land situate in the parish of Wokingham, the grounds of the appeals being that the land is not undeveloped land within the meaning of Section 16 of the Finance (1909-10) Act, 1910, by reason that it is land used *bona fide* for the business, trade, or industry of the appellant; that is to say, the business, trade, or industry of developing and dealing in land; and that such business, trade, or industry is within Section 16 of the said Act. The amounts of the respective assessments were not appealed against.

The plots of land which are the subject of the appeals are situate at Crowthorne on a building estate laid out by the appellant or his predecessor in title by the construction of roads to create frontages, some of the plots in question having frontages to the new roads so constructed, and some to two parish roads; and it was proved by the appellant that the plots in question are for sale, and are not used at present either for agriculture or for any other purpose, and that the appellant by advertising and otherwise continually endeavours to find purchasers for them. It was admitted by counsel for the Commissioners that the appellant does carry on the business of developing land, and that land developing as carried on by the appellant is a business. In my opinion the land which the appellant has for sale is not used by him for the purposes of his business within the meaning of the Act. The decision on the appeals is therefore that the assessments of undeveloped land duty should be maintained.

For the appellant: E. W. Cox-Sinclair and T. Hynes, instructed by Hollest, Mason & Nash, Farnham.

For the respondents: F. W. W. Kingdon, Assistant Solicitor of Inland Revenue.

[Decision affirmed by Rowlatt, J., on appeal, January 26, 1915.]

Before JOHN LOPDELL, Esq., *Referee*, 23rd November, 1914.

TRANQUILLA COMMUNITY *v.* COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—LANDS BELONGING TO A RELIGIOUS COMMUNITY—MILK AND POULTRY NOT REQUIRED FOR OWNER'S USE SOLD—TRADE OR BUSINESS—FINANCE (1909-10) ACT, 1910, SS. 16 & 17 (2).

This was an appeal on behalf of the appellants, a religious community, residing at Rathmines, co. Dublin, against the claim for undeveloped land duty on the grounds that, (a) having regard to the user of the premises, they should be exempt; (b) the lands are used for the purpose of trade, industry or business, and the sale of milk, poultry, &c.; and (c) in the alternative, under Section 17 (2) of the Finance (1909-10) Act, 1910. The evidence produced before the Referee went to show that the owners

usually kept six cows grazing on the land, and, after supplying the requirements of the community, they received a substantial sum annually by the sale of milk, and that they also disposed of vegetables and some poultry.

The Referee said :—

I hold, under the circumstances, that the land is liable to undeveloped land duty, subject to the provisions of Section 17 (2). I award that the appellant should pay to the Commissioners of Inland Revenue the sum of £4 4s. expenses.

For the appellant : J. S. Baxter, instructed by Thomas J. McGrath.

For the respondents : B. Collins, of the Solicitor's Department Inland Revenue.

Before THOMAS JONES, ESQ., *Referee*, 24th November, 1914.

KIVETON PARK COAL COMPANY, LIMITED, *v.* THE COMMISSIONERS
OF INLAND REVENUE.

BRODSWORTH MAIN COLLIERY COMPANY, LIMITED, *v.* THE
COMMISSIONERS OF INLAND REVENUE.

INCREMENT VALUE DUTY—MINERALS—FINANCE (1909-10) ACT,
1910, ss. 1, 2, 22, 23.

Mr. Cockburn said the minerals in the case of the Kiveton Park Coal Company's appeal were the Barnsley seam beneath the Hoppings, Doctor's Lane, Harthill. The superficial area of the seam was 2 acres 3 roods 39 poles, and on April 30, 1909, the minerals belonged to Mr. S. C. Duckworth, who by deed dated December 20, 1909, conveyed the Barnsley bed of coal to the appellant company for £300. The minerals surrounding the subject of the appeal were on that date, and still were, being worked by the company under a mining lease granted to them by the Duke of Leeds. The original capital value of the Barnsley seam was fixed by the Commissioners by their valuation at £300, and that had become finally settled. The appeal related to the financial year consisting of the 12 months ending September 30, 1911. During that period 1 acre 9 poles of the Barnsley bed was worked out of the minerals by the company; and the rental value based upon that working was £106, that being the sum which would have been received as rent by the proprietor in the working year if the right to work the minerals had been leased to a working lessee for a term, and at a rent, and on conditions customary in the district.

James M. MacIldowie, secretary to the Kiveton Park Coal Company, Limited, said that before April, 1909, the appellants were the lessees of the surrounding coal. They were rapidly approaching it, and no one else could have worked it. It was too small for a separate shaft to be sunk

down to it. In addition to the 1 acre 9 poles worked up to 1911 they had worked 2 roods 23 poles, making a total of 1 acre 2 roods 32 poles, and leaving 1 acre 1 rood 7 poles unworked. That, however, could not be worked, owing to a fault. At the customary rent, £25 per foot thick per acre, the total worked would realise £171 6s. 8d., which showed a loss compared with the original value of £300 of £128 13s. 4d., representing coal not capable of being worked.

Mr. Cockburn said the Brodsworth Main Colliery Company, Ltd., had two appeals, known as Lower Strafforth 137 P and 138 P. The latter was also known as Pinder's Acre or Pinder's Piece. The appeal in respect of 137 P referred to the financial year 1912-13, and the minerals, consisting of the Barnsley bed of coal and other minerals (the latter being treated as of no value) under 3 acres 1 rood 20 poles, belonged on April 30, 1909, to Cree's Executors. The Barnsley bed was conveyed to the appellant company by deed dated August 23, 1910, for £550. The original valuation was fixed by a provisional valuation served on November 29, 1912, and the original capital value as at April 30, 1909, was put at £550. The working year adopted by the appellants ended on June 30 of each year. The company first entered upon the seam on August 23, 1910, and during the year ended June 30, 1911, they worked 1 rood 32 poles, during the year ended June 30, 1912, 2 acres 2 roods 20 poles, and during the year ended June 30, 1913, 1 rood 8 poles, thus exhausting the seam. After the original capital value had become fixed an apportionment was made between the Barnsley seam of coal and other seams, and £550 was allocated to the Barnsley seam, the other seams being treated as of no value. For the working year ending June 30, 1912, the sum which would have been received as rent in respect of the working of the minerals if they had been leased to a working lessee would have been £395. As to 138 P, the minerals under 3 roods 39 poles, on April 30, 1909, belonged to the Official Trustee of Charity Lands and the Trustees of the Pinder's Charity in Adwick le Street. The Barnsley bed of coal was conveyed to the appellant company on April 29, 1912, for £137 10s. The provisional valuation showing the original capital value at that sum was served on November 29, 1912, and had become fixed. The company entered upon the coal on April 29, 1912, and during the year ended June 30, 1912, they worked out 1 rood 34 poles, and the sum which would have been received as rent had the minerals been leased to a working lessee would have been £54.

Clement C. Gatley, secretary to the Brodsworth Company, said that at the time the company purchased these coals they were the lessees of the surrounding coal. There were negotiations for Cree's coal in 1908. The coal had decreased in value since they acquired it owing to danger of gob-fires. In getting to Cree's coal they came across a fault, which took three years to get through, at a cost of about £400.

Cross-examined: They first negotiated for a lease of Cree's coal; in 1908 they were not negotiating for purchase. They first negotiated for purchase at the beginning of 1910. The first negotiation for Pinder's coal was in July, 1911.

Mr. Cockburn said the principal contention in all the cases was as

to whether there were any words in the Act making increment duty payable. The Commissioners were understood to say that the words "subject to the provisions of this part of this Act," at the beginning of Section 1, relegated to Sections 22 and 23 all provisions for charging and collecting increment value duty on minerals; or alternatively, that the present charge was exclusively authorised by the following words extracted from Section 1: "There shall be charged, levied, and paid on the increment value of any land, a duty, called increment value duty, at the rate of one pound for every complete five pounds of that value accruing after the 30th day of April, 1909," coupled with the following words from Section 22 (3): "Increment value duty in respect of the increment value of minerals which are comprised in a mining lease, or are being worked shall, where the duty is chargeable, be charged annually," and the following words taken from Section 23 (2), "Minerals which are comprised in a mining lease or are being worked shall be treated as a separate parcel of land not only for the purposes of valuation but also for the purpose of the assessment of duty under this part of the Act." Those contentions of the Commissioners were not well founded, inasmuch as Sections 22 and 23 were not charging sections at all. They were only collecting sections; they were adjectival, not substantival. The distinction between a charging and collecting enactment was clearly established in taxing law. The appellants were entitled to call upon the Inland Revenue to adduce in support of their claim clear and unambiguous words, expressly, literally, affirmatively, and positively imposing the duty. Mere implication or equitable interpretation, or presumed intention, was not enough in a taxing statute. For the present purpose and for all assessments of increment value duty upon every class of minerals as well as upon mere land, Section 1, in its entirety, was the charging section, and the only charging section. Section 22 (1) did not contain any charging words. It merely laid down a special mode of charging increment value duty where that duty was chargeable; that was to say, the duty, when payable at all, was to be paid annually "on the occasion of the grant of a mining lease, or in respect of minerals which are comprised in a mining lease or are being worked." It did not apply upon the sale or passing by death of the minerals which were unlet or not being worked, in which case Section 1 was the charging section, and Sections 3, 4, 5, and 6 were clearly the collecting sections. In the same way, Sections 22 and 23 provided how increment value duty should be collected in respect of minerals which were comprised in a mining lease or were being worked when they came within the range of the charge, an imposition effected by Section 1. Section 22 (2) and (3) were not charging sections, and Section 23 (4) showed that the object of the whole of Sections 22 and 23 was machinery in collection. The words "increment value duty" in Section 22 meant that there must be an actual increment of value, and hindered any duty from being collected under Sections 22 and 23 which was not increment value duty as defined by Section 1. The fact was that the Commissioners' contention compelled them to demand under Sections 22 and 23 a duty which was not an increment at all, but a duty which ought to be called "an additional and

"independent minerals percentage duty." The Commissioners' contention was opposed to all canons of construction applicable to statutes. In Section 1 there were 297 words. The department were driven to rely upon the first 55 words, and ignored the remaining 242 words, which qualified the generality of the first 55 words. Yet the law was that every word in the statute must be taken into account. For these reasons the appellants contended that they were not liable to increment value duty at all, no occasion having arisen, and the duty not being payable at all merely on account of minerals being worked.

Mr. Kingdon said that in each case they had a proprietor working his own minerals, and that he worked them after the passing of the Act was shown by the working year, which was agreed, as was also the capital value of the minerals. In each case the rental value depended upon the amount of coal worked each year, and that was not disputed. That, he contended, left a mere matter of arithmetic. They had to take 8 per cent. on the original capital value, subtract that from the rental value for the year of assessment, and what remained was liable to increment value duty. All minerals were to be valued as at April 30, 1909, unless they were being worked or comprised in a mining lease. The minerals in question were not being worked, and were not comprised in a mining lease at that date. It had been suggested that the words in Section 24 helped the appellants: "where any minerals are at any time being worked by means of any colliery, mine, quarry, or open working, all the minerals which belong to the same proprietor, if the minerals are being worked by the proprietor, or which the lessee has power to work if the minerals are being worked by the lessee, and which would, in the ordinary course of events, be worked by the same colliery, &c., shall be deemed to be minerals which were being worked at that date." But the section did not extend to the case where "B" hoped to acquire "A's" minerals, and, when acquired, to work them. The appellants claimed the benefit of that, because they were working surrounding minerals, but that could not be maintained, as the section said the minerals must belong to the same proprietor, and there was no question whatever that the minerals on April 30, 1909, did not belong to the same proprietor. A man did not negotiate for what was his own. The appellant's argument that a positive increase in value must be shown was put an end to by Lumsden's case, unless it could be shown that minerals stood on quite a different position to land. On the contrary, Section 1 dealt with increment value duty on land, and Section 23 (2) said that minerals which were being worked should be treated as land. He did not concede that Section 1 was the only charging section; even if Section 1 did not apply, he could still rely on Sections 20-22. The charging part of Section 1 was the first five lines down to "1909," and only there could one get the rate of duty; the words "subject to" clearly implicated some further directions. Subsections 1 (a), (b), and (c) were mere occasions for collection, and he suggested that in the same way Sections 22 and 23 were collecting sections. Minerals fell within 1 (a), (b), and (c) in certain cases, when duty was taken once for all, in a lump sum, the only difference being that

one arrived at the increment by Section 2, assisted by Section 23 (1) and (4). There was nothing in 1 (a), (b), and (c) to charge people with periodical duty, but when one got to Section 20 one found that the Legislature did intend to levy annual duty. A statute must be interpreted according to the obvious meaning. Annual increment value duty was really a tax on speedy working; there was no need to show an actual increase in value. Everybody, in valuing or buying ungotten coal, allowed for possible faults, &c.; the appellants, by what they had found, had escaped a tax in future years. The tax was based only on the working, either by the proprietor or the lessee; the appellants contended that there must also be one of the occasions in Section 1, but that could not be got out of the Act anywhere, otherwise why should the Legislature, in Section 22 (2), grant an exemption from a duty which, according to the appellants, did not exist? The words in Section 22 (3), "where that duty "is chargeable," were a parenthesis and a caution that there were exemptions, *e.g.*, Section 22 (2).

Awards: 1. Kiveton Park:—

That, notwithstanding the definition in Section 2 (1) of the Finance Act, that "the increment value of any land shall be deemed to be the "amount (if any) by which the site value of the land, on the occasion "in which increment value duty is to be collected, as ascertained in "accordance with this section, exceeds the original site value of the land, "as ascertained in accordance with the general provisions of this Part of "this Act as to valuation," the charging effect of Section 1 (a) is enforceable on the occasion and in the manner set forth in Section 22 (3); and having regard to the agreed factors set out in the statement attached to the form of claim, it is applicable in the matter of this appeal, inasmuch as the minerals in question were neither in lease nor being worked on April 30, 1909.

That the "occasion" when increment value duty became chargeable arose upon the working of the minerals by the appellants in 1910-11.

That the original capital value on April 30, 1909, viz., £300, had not increased at the time of the acquisition of the minerals by the appellants on December 28, 1909.

That, although no increment in the original value of the minerals has been proved, Section 1 (a), the latter portion of Section 2 (1), *i.e.*, "as "ascertained in accordance with the general provisions of this part of this "Act as to valuation," and the definite instruction in Section 22 (3) as to the method by which increment value duty on minerals (when that duty is chargeable) is to be arrived at, and charged annually as therein set forth, govern the subject-matter of this appeal. Therefore, I decide that—

- (1) The assessment appealed from is correct.
- (2) The transfer on sale took place on December 20, 1909, and no evidence of a contract for purchase thereof prior to April 30, 1909, was placed before me.
- (3) The assessment for increment value duty can be, and has been, properly made, and the appellants are the persons properly

chargeable therewith, being the proprietors who have acquired and worked the minerals since April 30, 1909.

- (4) According to the plan put in by Mr. MacIldowie, the secretary of the appellant company, no portion of the coal in question was being worked on April 30, 1909, as the first working is shown to be in the quarter ending July, 1910.

With regard to costs, the point at issue being, in my view, substantial, and one which the appellants were justified in raising, their costs in connection with this appeal are to be paid by the Commissioners of Inland Revenue.

2. Brodsworth Main :—

That the original values, as at April 30, 1909, had not increased at the time of the acquisition of the minerals by the appellants in August, 1910, and April, 1912, respectively.

That, although there was no increase in the original values, the effect of Section 1 (a), in conjunction with the latter part of Section 2 (1) ("as ascertained in accordance with the general provisions of this Part of this Act as to valuation"), and the specific directions in Section 22 (3) as to the method by which increment value duty on minerals (when that duty becomes chargeable) is to be arrived at and charged annually, governs the subject-matter of these two appeals.

That, notwithstanding Section 2 (1) of the Finance (1909-10) Act, 1910, wherein the definition of increment value of any land (minerals being a separate piece of land) is set out, the working of minerals in any one year in excess of the annual proportion of two twenty-fifths (2-25ths) of the whole area is an "occasion" when increment value duty becomes chargeable in the manner set forth in Section 22 (3).

That, as the minerals in question were neither in lease nor being worked at April 30, 1909, nor at the commencement of the Act (April 29, 1910), the "occasion" when increment value duty became chargeable in pursuance of Section 22 (3) arose in each case upon winning during the working year an amount of minerals in excess of two twenty-fifths (2-25ths) of the entire area.

Therefore, I decide that—

- (1) The assessments appealed against are correct.
- (2) The transfer on sale, in the case of No. 137 P, "Cree's Land," took place on August 23, 1910, and in the case of No. 138 P, "Pinder's Acre," on April 29, 1912; and no evidence of a contract for purchase of either of these two plots prior to April 30, 1909, was adduced.
- (3) The assessments for increment value duty, 137 P and 138 P, have been properly made, and the appellants are the persons properly chargeable with the duty, being the proprietors who have acquired and worked the minerals since April 30, 1909.

Both parties applied for costs. As to this, the points at issue being, in my view, substantial, and such as the appellants were reasonably justified

in raising, I decide that their costs in connection with these two appeals are to be paid by the Commissioners of Inland Revenue.

For the appellants : J. H. Cockburn (Parker, Rhodes & Co., Rotherham).

For the respondents : F. W. W. Kingdon, Assistant Solicitor to the Inland Revenue.

Before GEORGE BENNETT MITCHELL, ESQ., *Referee*, 21st December, 1914.

COUNTESS OF SEAFIELD'S TRUSTEES *v.* THE COMMISSIONERS OF
INLAND REVENUE.

PROVISIONAL VALUATION — SITE VALUE. — MISUNDERSTANDING
REGARDING TENURE — GROUND HELD ON FEU AND NOT ON
LEASE — DEDUCTION FOR FEU-DUTY AND CASUALTIES — EX-
PENSES — FINANCE (1909-10) ACT, 1910, s. 25 (3) (4).

After an appeal against a provisional valuation had been intimated, the Commissioners of Inland Revenue, having found that the land was held on feu and not on lease as they originally supposed, served an amended provisional valuation, in which they made a deduction for the feu-duty but not for the casualties exigible from the land, and against which the appellants also appealed. *Circumstances in which held* that appellants were only entitled to modified expenses.

The premises to which these appeals related consisted of two shops with back shops, stores, &c., with a dwelling-house above in the occupation of the owner, forming 99-103, Mid Street, in the town of Keith and county of Banff. The annual rent was £56. Form IV. was not produced before the Referee. The district valuer assumed that the land was held on lease, and in the provisional valuation made no deduction for the rent or tack-duty, which is not a "fixed charge" within the meaning of the Act (see *ante*, *Countess of Seafield's Trustees*, p. 232), and entered the site value at £125. A copy of the provisional valuation was served on the appellants on March 11, 1913. They gave notice of objection on May 10, 1913. The Commissioners on July 12, 1913, intimated that they declined to amend, and the appellants gave notice of appeal on August 8, 1913, on the ground that the site value was excessive. After the Referee had fixed a day for hearing the appeal, the Commissioners requested a postponement, as it had then come to their knowledge that the ground was held on feu and not on lease. The appellants, however, refused to withdraw the appeal. The Commissioners on November 4, 1913, issued an amended provisional valuation in which the site value was reduced by £10, being 20 years' purchase of the annual feu-duty of 10s. payable from

the ground. The appellants gave notice of objection to the amended provisional valuation on December 23, 1913. The Commissioners on February 4, 1914, declined to amend, and on March 4, 1914, the appellants again gave notice of appeal on the ground that the site value was excessive.

The two appeals were heard before the Referee at the same time. From the evidence led it appeared that the appellants had had some difficulty in identifying the original grant by their predecessor of the piece of land in question; and the Commissioners founded on a letter from the appellants' factor to the district valuer, dated October 15, 1912, as showing that the ground was held on lease and not on feu. The letter was as follows: "Referring to our conversation the other day, I now enclose list of Keith 'feus on which, so far as I have been able to trace from our records, no 'charters have been granted.' The ground forming the subject of appeal was one of those mentioned in the list. At the date of the hearing, however, the original charter had been found, and it was produced to the Referee. Granted in 1752 by James, Earl of Findlater and Seafield, to John Beg, tailor, in Haugh of Grange, it stipulated for an annual feu-duty of six pounds Scots (10s.), with a double feu-duty at the entry of each heir, and a fully year's rent of the houses on the ground at the entry of each singular successor. The appellants claimed a deduction not only for the feu-duty but also for the casualty, and in addition claimed that the site value as stated in the provisional valuation was excessive, and should be reduced to £40. The Commissioners maintained that as the tenure was not disclosed until the hearing, they should not be found liable in expenses. The Referee, in his awards, allows a deduction of £10 for the feu-duty and £45 for the casualty, and finds that the original assessable site value is £70. In the appeal against the original provisional valuation, the appellants are found entitled to expenses to the date of serving the amended provisional valuation; and in the appeal against the amended provisional valuation they are found entitled to their expenses modified to one-half.

For the appellants: Thurburn & Fleming, Keith.

For the Commissioners: Alexander Blair, Chief Valuer for Scotland.

Certain of the Decisions of Referees, &c., reported or referred to in this issue are or may be under Appeal. The results of such Appeals will be reported or referred to in forthcoming issues of these Reports, but in the meantime the possibility of such decisions being reversed on Appeal should be borne in mind.

LAW CASES.

[KING'S BENCH DIVISION.]

MATTHEWS v. INLAND REVENUE COMMISSIONERS.

[MAY 9TH, 1914.]

*Revenue—Land Values—Provisional Valuation—Appeal to Referee—
Order to pay Costs—Unascertained Amount—Power to make
Order a Rule of Court—Finance (1909-10) Act, 1910 (10 Edw.
VII., c. 8), s. 33.*

By Section 33 (1) of the Finance (1909-10) Act, 1910, any person aggrieved may appeal against any determination by the Commissioners of the total value or site value of any land. By Subsection (2) the appeal is to be referred to a Referee appointed under the Act. By Subsection (3) the Referee is to determine any matter referred to him in consultation with the Commissioners and the appellant, and may order that "any expenses incurred by the appellant be paid by the Commissioners . . . " Any order of the Referee as to expenses may be made a rule of the " High Court."

Upon the hearing of an appeal under the above section, the Referee by his award directed that the appellant's costs of the appeal should be borne by the Commissioners, but did not assess the amount of the costs. On a motion to make the award a rule of Court:—

Held, that a Referee can make a valid order as to costs although he does not fix the amount, inasmuch as the costs can be taxed by a Master, and that the award ought therefore to be made a rule of Court.—83 L. J., K. B., 1552.

[HOUSE OF LORDS.]

LUMSDEN v. INLAND REVENUE COMMISSIONERS.

[JUNE 18TH, 19TH, 22ND, 23RD, 25TH; AND JULY 20TH, 1914.]

Revenue—Increment Value Duty—Sale of Fee Simple—Method of Calculation—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 2 & 25.

In 1910 the appellant sold the fee simple of a dwelling-house, subject to tithe of the capital value of £33, for £750. The "full site value" on April 30, 1909, was £228, and there was no change in the value between that date and the date of the sale. The "gross value" at the date of the sale was found to be £658, and the proper deduction under Section 25 (4) (b) of the Finance (1909-10) Act, 1910, in respect of roads was found to be £90. The "original site value" was £105:

Held, by the Lord Chancellor and Lord Shaw, that the site value on the occasion of the sale was to be arrived at under Sections 2 and 25 of the Act by deducting from the purchase price of £750 the sum of £430, being the difference between the gross value and the full site value, and also the £90 in respect of roads, and that the appellant was properly assessable to increment value duty on the difference between this amount (£230) and £105, the original site value.

Decision of the Court of Appeal (82 L. J., K. B., 1275; [1913], 3 K. B., 809) affirmed; Lord Moulton and Lord Parmoor dissenting.

July 20, 1914.

Viscount Haldane, L.C.: This appeal raises a question of much difficulty which has been the subject of elaborate argument at the Bar. But the real point lies within narrow limits, and turns on the proper construction of a few words in a statute, the Finance (1909-10) Act, 1910. The sections of this Act which relate to duties on land values have obviously been drafted with remarkable skill. But the subject was so novel and so complicated that it was inevitable that questions should arise on which the meaning of the Legislature has not been made wholly free from ambiguity. The duty of a court of construction in such cases is not to speculate on what was likely to have been said if those who framed the statute had thought of the point which has arisen; but, recognising that the words leave the intention obscure, to construe them as they stand, with only such extraneous light as is reflected from within the four corners of the statute itself, read as a whole.

The appellant has been held liable for increment duty arising upon the occasion of a sale by him of a dwelling-house and shop. By the Act of Parliament the duty is charged on the increment value of land. This increment value is the amount by which what is called the site value

exceeds, on the occasion on which the duty arises, the original site value. Such is the effect of Sections 1 and 2.

Before referring further to the provisions of Section 2, which give a special meaning to site value on this occasion, it will be convenient to turn to the later sections in order to see what various values mean when spoken of generally in the Act. By Section 26 a valuation of all land is to be made, showing separately the total value and the site value. These are defined in Section 25, together with two other values. The first of the four values there defined is gross value, which means the amount which the fee simple of the land, if sold in the open market by a willing seller in its then condition, free from incumbrances and from any burden charge, or restriction (other than rates and taxes), might be expected to realise. The second value is full site value, which means the value which the fee simple, if similarly sold, might be expected to realise if the land were divested of all buildings and structures appurtenant to such buildings, and of all growing timber and other things growing on the land. The third value is total value, which means the gross value after deducting the amount by which this gross value would be diminished if the land were sold subject to any fixed charges (afterwards so defined as to exclude mortgages) or public rights of way, or user, or rights of common, or easements, or certain kinds of restrictive covenant or agreement. The fourth value is assessable site value, which means the total value after making various deductions. These include the same amount as is to be deducted for the purpose of arriving at full site value from gross value, and also value directly attributable, in the case of a non-agricultural property such as that under consideration, to, among other things, roads. There are other deductions to be made from total value in arriving at assessable site value, but these need not at present be considered. The section also provides towards its close that any reference in the statute to site value, other than a reference to it on an occasion on which increment duty is to be collected, is to be deemed to be a reference to assessable site value as ascertained in accordance with the section.

Turning back to Section 2, it first enacts that the increment value of any land is to be deemed to be the amount by which the site value, on the occasion on which increment value duty is to be collected after being ascertained in accordance with this section, exceeds the original site value ascertained in accordance with the general provisions of the Act as to valuation. The section then provides that the site value on the occasion on which increment duty is to be collected is to be taken to be, where, as here, the occasion is a transfer on sale of the fee simple, the value of the consideration for the transfer. I observe that among the other enumerated occasions are the periodical occasions on which the duty is to be collected in respect of the fee simple of land held by a body corporate or unincorporate, in which cases the total value is to be estimated in accordance with the general provisions as to valuation to which I have already referred. In all these instances the site value thus defined is to be "subject in each case to the like deductions as are made, under the general provisions of this Part of this Act as to valuation, for the purpose of arriving at the site value of land from the total value."

It is upon the construction of the words which I have just quoted that the question to be decided turns. The appellant contends that the expression "like deductions" means, where the case is one of transfer on sale, that deductions are to be made from the value of the consideration in their character resembling or analogous to but not identical in amount with those which are made when, under the general provisions as to valuation, site value is ascertained from total value. The argument on his behalf is that, in applying the analogy of the process of deduction prescribed by Section 25 for the ascertainment of assessable site value, you are to start from the amount of the value of the consideration as though it were a total value, and then make the kind of deductions which are prescribed in Section 25, where the start is made from total value which is merely estimated.

The respondents, on the other hand, contend that the words "like deductions" are not ambiguous. They point to the language of Section 25 (4) (a) as defining the first deduction to be "The same amount as is to be deducted for the purpose of arriving at full site value from gross value." They argue that there is, therefore, no room for making any other deduction than this varying amount which is to be, if they are right, ascertained with reference, not to the value of the consideration, but to the difference between the estimated gross and full site values.

Before considering the question of construction thus raised, I desire to refer to the facts out of which the appeal has arisen. The Referee under the Act stated a special case. He found that the consideration for the transfer on sale was £750, and that the fee simple had been sold subject to tithe of £33 capital value. He found further that the amount of deduction to be allowed under Section 25 (4) for the making of roads was £90. He also found as follows: At the time of the sale of the fee simple of the property, if sold in the open market by a willing seller in its then condition, free from incumbrances and from any burden, charge, or restraint other than rates and taxes (the words of the subsection defining gross value), might have been expected to realise £658. It was admitted that there had been no variation in the full site value between April 30, 1909 (the date as on which the original valuation had to be made), and August 23, 1910, the date of the sale. It was agreed, he said, that the full site value was £228 on each date. The original assessable site value was £105.

The important controversy between the parties which arose on these findings was as follows: The appellant maintained that the deductions directed by Section 2 to be made from the value of the consideration must be made from the £750 and £33 (the amount of the capital charge for tithe), in order that the analogy of the deduction from gross value might be followed. As the full site value at the time of sale had by admission remained at £228, the difference between gross value and full site value must be taken to be £555. Therefore, on the footing that the sale price of £750 was to be taken as representing the total value for the purpose of ascertaining the proper deductions, it was from this figure that the £555 must be deducted, and this subtraction, after allowing £90, as a further

deduction for roads made, resulted in an assessable site value of £105. There was, therefore, no increment value, for according to the original valuation which was annexed to the Referee's report, the original gross value was £658, the original total value that amount minus the £33 capital value of tithe—that is, £625—the original full site value £228, and the original assessable site value £105, the same amount as on the occasion of the sale.

The respondents challenged this basis of calculation, contending for a different construction of Section 2. Accepting the figures, they said that as the gross value had been found at the time of the sale to be £658, and the full site value to be £228, the difference really prescribed by the Act of Parliament was £430. They maintained that, on the facts found, there could be no further deduction, the gross value having been so found, excepting the £90 for roads, and that the total amount of deduction from the £750 was therefore £520, which gave a site value of £230, and resulted in increment duty being exigible on the difference between this and the original site value of £105.

The Referee took the view of the appellant. On appeal Mr. Justice Horridge disagreed with the Referee, and adopted the contention of the Crown. In the Court of Appeal Cozens-Hardy, Master of the Rolls, and Lord Justice Kennedy agreed with Mr. Justice Horridge, but Lord Justice Swinfen Eady differed. "The real crux of the matter lies," he said, "in 'the contention that the direction to make 'the like deductions' from the 'consideration for the transfer' involves a direction to arrive at a new *estimated* gross value of land on the occasion of a sale.' He held that the statute contained no direction to make a new valuation of gross value on the occasion of a sale, and that full effect could be given to the direction to make "the like deductions" by starting with the actual consideration realised and making such deduction as was necessary to ascertain the divested or full site value. He thought that this was the only method which achieved the purpose of the Act, which was to tax an actual difference between present and past site value.

Two observations occur to me at once on this reasoning. The first is that it assumes that site value on the occasion of sale when directed to be ascertained for the purposes of increment duty means the same thing as site value when directed to be ascertained for the purposes of the original valuation. The second observation is that the learned Lord Justice regarded himself as bound, or at least at liberty, to construe as ambiguous the words in Section 2 (2): "subject in each case to the like deductions as are made, under the general provisions of this Part of this Act as to valuation, for the purpose of arriving at the site value of land from the total value." I have for the second time quoted the words in full, because they seem to me to contain the whole point on which this appeal turns. Does "the like" mean in this context anything different from "like in amount and method of calculation"? Can the use of the words "the like" be taken to import an instruction to make deductions on another basis than that of the valuation which is expressly mentioned, and can the actual price be substituted, consistently with the language used, for total value as ascertained by valuation?

It is no doubt true that there are cases of construction where the natural meaning of the words of a statute is rejected and another meaning not expressed by the words taken in their ordinary sense is read in. That occurs where the context and scheme of the statute requires that this should be done in order that the language of the statute as a whole may be read as consistent. But a mere conjecture that Parliament entertained a purpose which, however natural, has not been embodied in the words which it has used, if they be literally interpreted, is no sufficient reason for departing from the literal interpretation.

It may seem to some unlikely that the Legislature should have meant to put a tax on anything but an increase in site value strictly so called. It is no doubt true that, if the construction argued for by the Crown is right, something more than site value will be taxed in cases in which, by a lucky chance, or by reason, for example, of some special attraction about the building, a larger price has been realised than would have been anticipated by a competent valuer estimating on the hypothesis of a sale to an ordinary buyer willing to give the full price in an open market.

But if this be what the words used appear, when read naturally, to direct, that interpretation can only be displaced by showing that the Act intended by the expression "site value," when used in connection with increment value, the same thing as site value when used in relation to original assessable site value. Yet this may well not be so, for in the definition of site value, which occurs towards the end of Section 25, and has already been quoted, it is expressly provided that a reference to site value in the Act on an occasion when increment duty is to be collected, is not, as in other cases, to be deemed to be a reference to assessable site value as ascertained in accordance with Section 25. The construction of the appellant assumes, in dealing with the deductions, the actual price as the starting point in place of estimated total value, and proceeds to deduct from this the difference between the former and the amount of full site value, which must always be an estimated value. The amount to be subtracted must therefore always vary with the price. If the price is great it will be proportionately great, if the price is small it will be proportionately small. As full site value is an estimated and not an actually received value, and does not depend on the accident of a good or a bad sale, the assessable site value is thus, on the appellant's construction, the same whatever the price on the particular occasion may be.

On the construction of the Crown, which treats the amount to be deducted from the price as the difference between the estimated gross and full site values, the site value to be taxed for the purposes of increment duty will vary with the actual price. If this is large, the subject may have to pay something more than what, for the purposes of other parts of the Act, is estimated to be assessable site value. But if the actual price received be below the estimated market value, he may be proportionately relieved from increment duty on the normal amount of site value strictly so called. The difference between the two methods is that, according to the appellant's contention, the casual price, which may be greater or less than would normally be expected, is to govern, while according to the

Crown the normal price—that is, that which might be expected to be obtained under ordinary circumstances in an open market from a willing buyer, is decisive. According to the latter construction windfalls will to some extent be taxed, whatever they may be due to, site, buildings, or anything else. But, on the other hand, depreciation in the auction room by reason of forced sales or other adverse contingencies is mitigated.

That this is so appears to me to be plain when the alternative figures in the case based on the two interpretations are compared. On the appellant's interpretation of the Act, which substitutes for the total value in Section 25 (4) the actual price received, it is immaterial whether that price is great or small so far as the assessable site value on the occasion of the sale is concerned. In the case before us this must always be on that construction £105. The reason is that gross value is made dependent on actual price, and the difference to be deducted under Section 25 (4) (a) between the amount of gross value and the full site value, which is estimated will, therefore, vary proportionately to the price. The resulting figure for assessable site value is accordingly dependent on the estimated full site value, and on any deductions to be made from the total value, that is the price, under Subsections (b), (c), (d), and (e) of Section 25 (4). Supposing the original site value to have increased, the landowner will accordingly be taxed on the increase, notwithstanding that the circumstances under which he sold have made him accept a price much less than the normal value in the market. But this is not the case if, as the Crown contends, that normal value is to be the decisive factor. If the sale price had been, say, £520 instead of £750, the difference of £230 would have been extinguished if the method of the Crown had prevailed, and no duty would have been payable.

I think that as regards increment duty, at all events, the Legislature may, so far as the general policy of the statute is concerned, have contemplated either of these methods. It is to the precise expressions used in the case of increment value that we have therefore to look for guidance. Now, when I turn to Section 25 to find the character and amount of "the like deductions" which are directed to be made by its provisions as to valuation for the purpose of arriving at site value from total value, I meet with what appear to me to be directions which are *prima facie* unambiguous.

The first deduction directed by Section 25 (4) is to be the same amount as is to be deducted for the purpose of arriving at full site value from gross value. Both these values, as referred to in this section, are values estimated as probably to be secured under normal and fixed market conditions. They have, and can have, nothing to do with sums which may result from sales in the contingent circumstances of special occasions, and I am wholly unable to read the expression "like" in Section 2 (2) as naturally meaning that the principle on which the language used directs them to be estimated is to be departed from. "Like" may not import identity of amount as definitely as the use of the word "same" would have done. But at least it connotes resemblance in main features.

Now, to my mind the most prominent of these main features is that in Section 25, the section pointed to, the Legislature is dealing with, not

actually realised prices, but estimated amounts to be calculated by the method of valuation which Sections 25 and 26 prescribe. I find myself unable to agree here with a judge for whose views I always entertain much respect, Lord Justice Swinfen Eady, who thinks that the Act cannot be read as containing any direction to arrive at a gross value of land on the occasion of sale. The scheme of the Act appears to me to provide for all the valuations which from time to time may become necessary. For instance, in the case of increment duty, Section 2 (2) (d), it directs the estimation by valuation, in the case of a periodical collection of increment duty payable by a body holding land, of the total value, and this implies the ascertainment of gross value, as its basis. There is no reason to think that the duties of the valuers are confined to the estimation of original values only. Again Section 28 expressly provides in the case of undeveloped land duty for periodical revaluations.

In the case of increment value duty it appears to me that Parliament must, on the literal construction of its language, be taken to have contemplated the possible taxation of either something more or something less than site value strictly so called. The amount of the duty, whichever construction is adopted, is in the case of increment duty based on deduction from the actual price as the starting point. For the rest the ascertainment of the normal market price, that is to say, valuation, seems to me to be prescribed as the basis on which deductions are to be estimated.

It was argued that the deductions directed after that under (a) in Section 25 (4) cannot properly be made from estimated value. Subsection (b) directs the deduction of any part of the total value which is proved to be attributable to works executed or expenditure of a capital nature made under certain specified conditions. Subsection (c) directs deduction of such part of the total value as is directly attributable to appropriations or gifts of land by persons interested in it for streets and other public purposes. Subsection (d) excludes any part of the total value which is attributable to the redemption of land tax, fixed charges, enfranchisement in the case of copyholds or customary freeholds, release of restrictive covenants or agreements, or to goodwill or any other matter which is personal to the owner or other persons interested in the land. Subsection (e) directs the deduction of any sums which, in the opinion of the Commissioners, it would be necessary to expend in order to strip the land for the purpose of arriving at full site value from gross value and of realising full site value. I do not see why each of these deductions, so far as they relate to total value, should not be made from estimated total value just as easily as from actual price, and the former alternative is, in my opinion, the only one which is "like" that to which the literal meaning of Section 2 (2) points.

There are two other remarks which I wish to make before concluding. The first is that the appellant's construction of the word "like" in Section 2 (2) compels him to hold himself at liberty to construct a new "gross value" of a kind not resembling that defined by Section 25. He has to treat gross value as meaning, for the purposes of his calculation, the sale price plus the capital value of the tithe. For this I can find no direction in the words of the Act. The second observation relates to his

reliance on Section 2 (3), which substitutes for original site value in 1909 the site value at the time of any transfer on sale within twenty years of that period, to be estimated by reference to the consideration given.

I think that this provision, which is in the nature of an option to the person sought to be taxed, is more favourable to him, assuming that he can surmount the difficulty of proof as to past estimated values, on the construction of the Crown than on that of the appellant, under which variation of actual price cannot, as it seems to me, affect the result. For this opinion I have in previous observations already given reasons which apply equally here. Nor do I think that Section 3 (5) affects the general question. As I observed in *Inland Revenue Commissioners v. Herbert* (82 L. J., P. C., 119; [1913], A. C., 326), it is a difficult section to construe, but on no construction does it appear to me to bear on the decision of the only point which we have to settle at present.

I said at the beginning that the duty of Judges in construing statutes is to adhere to the literal construction unless the context renders it plain that such a construction cannot be put on the words. This rule is especially important in cases of statutes which impose taxation.

For the reasons which I have given, I think that there is nothing in the context or general structure of the Finance Act before us which renders it necessary to read the words which have given rise to the present litigation otherwise than as the majority of the Judges in the Courts below have read them. With the conclusion reached by Mr. Justice Horridge, and by the majority in the Court of Appeal, I find myself in agreement, and I am of opinion that their judgments ought to be affirmed.

Lord Shaw: The question between the parties on this appeal is whether the appellant is liable to pay increment value duty upon the occasion of a sale by him of a dwelling-house and shop in the county of Northumberland. The sale took place on August 23, 1910. It was a sale of the fee simple. The price obtained was £750. The property was sold subject to the burden of tithe of £1 per annum, the capital value of which is £33.

Under the Finance Act this property had been valued, and the valuation was as at the statutory date, namely, April 30, 1909. In terms of Section 27 (1) of the Finance Act of 1910, the value shown in this original valuation must be "adopted as the original total value and the "original site value respectively for the purposes of this Part"—that is the valuation part—"of this Act." So that two elements have become fixed by reason of what has been done under the head of valuation under the statute; that is to say, the original total value and the original site value are definitely settled. These values were as follows: The original total value was £625, and the original site value was £105. These were arrived at by adopting calculations and making deductions, all in terms of the statute; but it is important to state and to keep in view that *per* the entries in the Domesday Book and in terms of the statute the original total value and the original site value have been precisely ascertained.

The property, having this original total value and original site value *per* the statute, was, as mentioned, sold, and the price obtained for its fee simple, subject as before to tithe, was £750. That also is a fixed figure.

There may be many calculations and deductions, but it is plain that not one of these amounts which I have mentioned can be departed from or violated.

The question which arises has reference to the duty called increment value duty. It is necessary to attend carefully to what the statute specifically declares that this "shall be deemed to be." Section 2 (1) declares that "For the purposes of this Part of this Act the increment value of any land shall be deemed to be the amount (if any) by which the site value of the land, on the occasion on which increment value duty is to be collected as ascertained in accordance with this section, exceeds the original site value of the land as ascertained in accordance with the general provisions of this Part of this Act as to valuation." It is plain that the increment value consists in the excess of the one of these site values—namely, the site value on the occasion of increment value collection—over the other site value, namely, the original site value. To ascertain how much the occasional site value exceeds the original site value you must find out what the amount of each factor is. Each of these factors is also a result of a process of deduction of one element from another. I examine these factors in turn.

As to the occasional site value : "(2) The site value of the land on the occasion on which increment value duty is to be collected shall be taken to be (a) where the occasion is a transfer on sale of the fee simple of the land, the value of the consideration for the transfer ; . . . subject . . . to the like deductions as are made, under the general provisions of this Part of this Act as to valuation, for the purpose of arriving at the site value of land from the total value." The consideration has been fixed ; there is no difficulty about that ; it is £750. But what are the "like deductions" ? The statute prescribes that they are the like deductions as in valuation are made from the total value for the purpose of arriving at the site value of the land. The Act appears to me to say : Although this is not the original valuation period, but a subsequent occasion, you must get at the deductions on the like principle and method as was originally adopted, for, whether for valuation purposes originally or for increment value duty purposes subsequently, these deductions are the things which must be kept out. As I shall show presently, the principal item of these deductions is, in fact, the element of buildings, fixed machinery, timber, and what for short may be described as permanent visible improvements. No increment value duty itself is to fall upon improvements.

The method of reaching the deduction figure is the method adopted in Section 25 in ascertaining assessable site value. By Section 25 (4) the assessable site value means the total value under certain deductions set forth there ; and what, in my opinion, the statute clearly declares is that, on the occasion of making calculations for increment value, the deductions—for example, the improvements, are to come off the amount of the consideration received. That, in my view, you cannot avoid. With regard to deductions they must be the like deductions as are made in getting at assessable site value, that is to say, deductions made from the total value for arriving at the site value. In this way Section 25 (4) becomes fairly

clear. "The assessable site value of land," it provides, means the total value after deducting certain specified things.

I pause there for a moment to remark that these deductions under Section 25—it must never be left out of view—are deductions from the total value as ascertained under that section. Unless the total value be taken as the datum from which certain deductions are to be made in order to ascertain the assessable site value, and unless that be adhered to, confusion is sure to emerge. But once the deductions thus made are quantified in money, then you are put in possession of a figure derived from the methods adopted at the original valuation—a figure of deductions—which figure must now, however, be put, not against total value as in the original case, but against the consideration received on the occasion when increment, if any, arises.

The problem therefore now is to get at the amount of those deductions from total value which are made for the purpose of arriving at assessable site value. Now those are set forth. They are in five different categories, (a) to (e) of Section 25 (4), but only the first two of these categories emerge in this case. As to one—namely, (b)—it is not disputed that to get at the assessable site value you must take in this case that part thereof which was attributed to expenditure of a capital nature—works like roads, drainage, &c.—and that figure is £90. That would have been clearly a deduction from total value in the original valuation. The next—namely, (a)—is set out in these terms: "The same amount as is to be deducted for the purpose " of arriving at full site value from gross value."

These respective values are set out in Section 25, which I may call the glossary section, which this House discussed in the case of *Inland Revenue Commissioners v. Herbert* (82 L. J., P. C., 119; [1913], A. C., 326). The gross value is the open market value free from incumbrances, and the full site value is that same open market value less incumbrances after deducting buildings, structures, timber, and what might be called visible permanent improvements. Deducting these from the gross value, you come at the full site value of the land. The total value is the gross value subject to the deduction of fixed charges, as in this case the tithe rent-charge.

On the occasion of the valuation of this property as at April, 1909, the gross value was set down at £658, and the tithe rent-charge being £33 the total value was set down, as already mentioned, at £625. From that total value of £625 there had to be deducted the same amount as is to be deducted for the purpose of arriving at full site value from gross value, that is to say, the amount reckoned as for buildings and improvements. That was £430, which, with the £90 for works like roads, &c., made £520, and this taken from the total value of £625 left the figure of £105. The assessable site value was accordingly entered in the Domesday Book as at that figure.

The report made by the Referee in this case shows clearly that in his judgment the total value and the value of the things which form deductions from that, namely, buildings and improvements, in order to arrive at site value, remain the same. If therefore, on the allegation of increment, the statute had ordained that in order to ascertain increment value you had simply, as in the original case, to make your deductions of buildings, &c.,

from the total value, the case would be at an end. But the statute has not done that, but has done something, in my opinion, very plainly different. It has said in effect this: The buildings and improvements in the original valuation were to be reckoned as deductions from total value in order to ascertain assessable site value, but this occasion, namely, value ascertainment, is a different occasion, and upon it you are to make the like deductions from the consideration actually received for the transfer of the fee simple. When you make the like deductions from that consideration, then that is what "the site value of the land on the occasion "on which increment value is to be collected shall be taken to be." So that the deductions, their value not having changed, as is certified by the Referee — namely, £430, plus £90, that is, £520 in all — these same deductions amounting to £520, are made on this occasion, not off total value, but under the express command of the statute, off the actual consideration received, that is to say, not off £625, but off £750. For my own part I have no hesitation in agreeing with the conclusion reached by Mr. Justice Horridge and the majority of the Court of Appeal.

It would be easy to comment upon the fact that the consideration in the present case being in excess of what, in the Referee's opinion, was the actual value, there is no affirmance that the site value has risen. There is not, nor is there any affirmance that the buildings or improvements value has risen. There is, in short, no affirmance as to the cause of the rise, but the consideration is nevertheless perfectly real, and it is that real, non-speculative, actual thing which the statute says that you must begin by taking into account as the full site value, subject to the deductions made as on the valuation occasion, or as I have set out. The statute seems to say, There is the windfall. If it is established that the increment arises by an increased value in buildings and improvements, then by no means let those be taxed, because the statute is imperative that these must be treated as deductions from any sum which is to be the basis upon which taxation is laid. Buildings and improvements are to escape increment duty. No taxation of that kind is to be laid upon them. But when it is not established that there is any increase of those buildings and improvements, or therefore any increase in the amount of the deductions which are to be made, let these deductions stand. They are unchanged in value. But let the sum from which they are made be the amount received by the fortunate vendor, and let the increment value—it being, however derived, increment value to him—be subject to his contribution to the taxation. Or, in the words of the Act, "site value . . . on the occasion . . . "shall be . . . the value of the consideration for the transfer." It is indeed a remarkable fact that the opposite construction in fact obliterates these words altogether. According to that view difference of consideration made no difference to site value. If the consideration, the price received, had been tenfold greater, and the improvements had remained the same, then no difference would have happened to the site value, and the words, that the site value is to be deemed to be the value of the consideration, are emptied of meaning.

That the consideration received should neither be expunged nor rendered meaningless, other provisions of the Act made clear. The

property in the first place is franked, so to speak, in respect of the increment, the site value being taken as the consideration subject to the deductions on the principle mentioned, and being raised accordingly so as to prevent subsequent increment being reckoned except upon that raised datum. What appears to me to be a commanding consideration in the construction of this statute is the case of the transfer of the sale of the fee simple of, or interest in, land any time within 20 years before the date when the statute came into effect, namely, April 30, 1909. This period is extended by the Revenue Act of 1911 under circumstances which need not be referred to. But it is important to look to the main provision of Section 2 (3) of the Act of 1910 so as to see how carefully the interest of the taxpayer was guarded under the 20 years' provision. During that 20 years a late owner may have bought upon the crest and sold in the trough of the wave, and when the Act passed, his successor, who had bought in the low market, might hold the subject. Thereafter he sells in a rising market, but the level of the old crest of the wave is not reached.

He is permitted in these circumstances the exercise of an option enacted for the purpose of conferring upon him a favour and a benefit, to point back to the old, and contrast it with the present consideration; the statute treats these as good indications both of the crest and the trough. I must decline to read all value out of this favour given to the taxpayer, by saying that a comparison of considerations means nothing at all. For in such a case the statute is very far indeed from reckoning difference of consideration or price as of no account; it expressly enacts that, Section 2 (3): "Site value shall be estimated for the purposes of this provision by reference to the consideration given on the transfer in the same manner as it is estimated by reference to the consideration given on a transfer where increment value duty is to be collected on the occasion of such a transfer after the passing of this Act." In these circumstances, speaking for myself, I do not feel free, but feel forbidden to displace or discard the actual consideration or price as a vital and controlling element in site value.

I agree with the conclusion reached by the Courts below and by the Lord Chancellor.

Lord Moulton: This case raises a question of vital importance in the construction of an Act, the passing of which marks a great change in the methods of taxation in this country. So far as the matters in dispute in this case are concerned, it was the conclusion of a political and economic agitation of many years' standing in favour of the adoption of a system which was commonly known as the "Taxation of Land Values." For the first time practical recognition was given to the principle that in the rise in value of land in civilised countries there is an element which is due to the general progress of the community, and is independent of any labour or expenditure of the owner or his predecessors upon the land itself, and that this so-called "unearned increment" forms a proper subject for specific taxation, or, in other words, that it is just that the State should take its share of such increment of the value of land as arises from this cause.

This particular tax was not, however, the only form of taxation of land

which was introduced by the Act. Part I. of the Act (which is headed "Duties on Land Values," and is the only portion of the Act which will be referred to by me on this occasion, inasmuch as the other divisions of the Act relate to wholly different forms of taxation) imposes also three other novel taxes upon land. The first of these, entitled "Reversion Duty," is a tax of 10 per cent. on the value of the benefit accruing to the lessor by reason of the determination of any lease. The second, entitled "Undeveloped Land Duty," is an annual tax at the rate of $\frac{1}{2}d.$ in the £ in respect of the site value of undeveloped land. The third, entitled "Mineral Rights Duty," is a tax of 1s. in the £ on the rental value of all rights to work minerals and of all mineral wayleaves.

In each of these cases there are careful and elaborate provisions for defining precisely the subject-matter of the taxation, and making allowances and adjustments, so as to bring the tax more fully into accordance with the fundamental ideas which plainly underlie the various departments of the new scheme of land taxation. But so far as a close and attentive perusal of the Act enables me to form a judgment none of these specific provisions do anything more. None of them indicate any intention to depart from the fundamental principles underlying each of these taxes, nor have they any such effect. They are either of the nature of practical provisions necessary for the purposes of the Act, or concessions to claims for allowances in respect of special circumstances, with the view of making the tax correspond more accurately with the principles upon which it is based.

An Act dealing with such novel forms of taxation must introduce concepts of the elements out of which the value of land is built up which were wholly new so far as legislation was concerned, however familiar they may have been to economists and political writers, and even to the public itself. To understand the Act properly it is necessary to get a clear idea of these concepts. They are four in number. The first is the "gross value" of land, which signifies the market value of the land taken just as it stands with all buildings, &c., which are upon it and free from all charges or restrictions. The second is the "full site value," which means the market value of the stripped site. The third is the "total value." This signifies the market value of the land with its buildings, &c., in the condition in which it stands, but subject to any fixed charges which are upon it (such, for instance, as "feu duties") and any other existing burdens, such as public rights of way, &c. All these charges and restrictions which are to be taken into account when arriving at the "total value" of the land are specifically enumerated in the statutory definition, and for the sake of convenience I shall term them "the burdens" on the land. The fourth and last of these concepts is the "assessable site value." It is the "full site value" less the "burdens." In other words it represents the value of the stripped site subject to the existing legal burdens upon the land, which would of course be burdens upon the site even if all buildings, &c., were removed.

These are the fundamental conceptions of the Act. But it is necessary to add that in the last case certain specific deductions enumerated in Section 25 (4) (b), (c), (d), and (e) are prescribed. These deductions

do not affect the main concept of "assessable site value" which follows from Section 25 (4) (a), although they affect its amount. They are of the nature of special allowances to meet cases where special circumstances (such as the construction of roads or other work done on the site itself as contrasted with erections upon it) exist which would render the result of applying the fundamental conception of "assessable site value" in an unmodified form unfair in those particular cases.

I have great sympathy with the difficulties of the draftsman of an Act dealing with matters so new to legislation, and I should be the last to cavil lightly at the form which he has adopted to express his meaning. But it is most unfortunate that, instead of expressing these simple concepts in clear and simple language, he has defined them as the results of arithmetical operations with which they have no necessary connection, and has thus given a wholly false appearance to their mutual relationships.

For instance, the "full site value of land" is defined as the amount which remains after deducting from the "gross value" the difference between the gross value and the value of what I have called the "stripped site." This amounts to nothing more or less than saying that it is the value of the stripped site. It is thus made to appear to be dependent on and to be derived from the "gross value," whereas it is quite independent of it. If from any chosen sum of money I deduct the difference between that sum of money and £100, the result must necessarily be £100, whatever be the sum chosen. I have entirely failed to find any explanation of the adoption of this complicated and misleading manner of expressing these simple ideas. It has been suggested that it was for drafting reasons, but on closer examination I can see no ground for thinking that it presents any advantages from that point of view. Yet the draftsman has adopted it not only in this but in other cases. Thus the "total value" of land is defined as the difference between the gross value and the gross value less the value subject to burdens, which is the same as saying that it is the value subject to burdens. Similarly the "assessable site value" (apart from the specific deductions to which I have referred) is defined as the difference between two things each of which is apparently dependent on the "gross value" of the land. Yet when one looks more closely into the matter it is found that the "assessable site value" depends in no way on "gross value," but is simply the full site value with the burdens thrown upon it as was decided by this House in the Herbert case (82 L. J., P. C., 119; [1913], A. C., 326). But although this peculiarity in the form of the definitions has the effect of rendering it more difficult to construe the Act, it does not leave any room for doubt as to the true meanings of the several definitions. They are as given above. These meanings are the direct arithmetical consequences of the verbal definitions appearing in the Act, and they and the concepts to which they relate, to which these special names have been given in the Act, must be borne in mind in dealing with the provisions of the Act if we would avoid becoming confused by the inexplicable form of the drafting.

I now turn to Section 1, which imposes the increment value duty. It levies a duty of 20 per cent. on the "increment value" of any land, and enacts that this duty shall be collected by instalments on certain occasions.

Those occasions are respectively (a) when there is a transfer of interest by sale or lease, (b) when there is a transfer of interest on death, (c) at certain periodical occasions. This last method only applies to cases where the land is held by a corporate or incorporate body, or in such a manner that it is not liable to death duties. The instalment of the "increment duty" to be paid in the case of the transfer of the fee simple of the land, or on one of the periodical occasions above referred to, is the full duty of one-fifth of the then increment value less so much as has already been paid. In cases of transfer of interests only (not amounting to the transfer of the whole fee simple) the instalment is a suitable proportion of such one-fifth of the total increment value, such proportion to be fixed by the Commissioners. The conception of the Act, therefore, is that as the site value of the land rises the State becomes entitled to one-fifth of the increment, but that it only ascertains and collects that which is thus due to it on occasions when there has been an ascertainment of the value of the land either by actual sale or leasing of the land or by a valuation of the land for revenue purposes by reason of death; unless the tenure of the land is such that these occasions will very rarely or never happen. In these last cases it collects the instalments at fixed intervals of 15 years.

I shall not stop to examine the provisions of Section 2, which deals particularly with the ascertainment of the site value on the occasions when duty is to be collected, except to say that it appears to me fully to carry out the above idea. The only novel feature in the method adopted in Section 2 (as I understand it) is that in cases where an ascertainment of value has taken place of an independent kind, without recourse to the machinery of the Act, the value thus ascertained is taken as the datum from which the calculations of the increment value, and therefore of the duty, are made.

To my mind, therefore, this part of the Act has a clear and distinct object ascertainable from the language of the Act itself which carries into effect a special form of taxation well recognised at the time and marked by distinct incidents inseparable from it. It could not be better described than in the language of the Minister in charge of the Bill when introducing it: "The valuations upon the difference between which the tax will be chargeable will be the valuations on the land itself—apart from buildings and other improvements; and of this difference—the strictly unearned increment—we propose to take one-fifth or 20 per cent. for the State."

I quote these words, not because they have any title to be used in the construction of the statute as it stands, but because they express in such clear and simple language the aim and object of the Act. For the purposes of judicial decision the aim and object of the Act and the machinery for effecting them must be ascertained from the language of the Act itself. But to my mind this House has already declared that the Act does in fact carry out the object of its authors as above expressed, and I shall proceed to make good this proposition before subjecting to an independent examination the language of the special provisions with which we are concerned in this case.

In the case of *Inland Revenue Commissioners v. Herbert* (82 L. J.,

P. C., 119 ; [1913], A. C., 326) the Act was subjected to examination in this House in order to determine whether it was consistent with the scheme of the Act that a recorded "assessable site value" should be a minus quantity. This House by its unanimous judgment decided that it was quite consistent with the object and provisions of the Act that recorded assessable site values should be minus quantities, because the tax was based, not on the actual value of the site value, but on its increment, and that there was no difficulty in measuring an increment from a datum line which marked a negative quantity. This decision that the tax is a tax on the increment of the site value is to my mind decisive of the present case for reasons which I shall presently give in detail. It is, therefore, desirable to refer with particularity to the judgments of this House in the Herbert case (82 L. J., P. C., 119, at pp. 123, 125, 126, 128, 135, and 137 ; [1913], A. C., 326, at pp. 334, 338, 340, 345, 355, and 359) in order to show how unhesitatingly and emphatically this House read out of the language of the Act that this is its general purport and effect.

The present Lord Chancellor, after frequently referring to the increment value on which the value is to be levied as the difference between the site value when the duty is to be collected and the original site value, says : " For the increment value directed to be taxed is, as I have already " pointed out, simply the difference between present and past site value, " and this difference is as real and easily measured when one of the " quantities is minus as when both are plus." And again : " The answer " to this is that what will be taxed when increment duty is levied will be " not the original site value, but the increase in site value."

In like manner Lord Atkinson says : " The increment in value arising " from an increased demand for building land due to an increase in the " wealth or numbers of the surrounding or adjacent population, to its progress in trade or manufacture, or to works carried out at the expense of " the municipality within the limits of which the lands are situate, and " such like things, the unearned increment as it is popularly called, it is " alone designed to tax."

Somewhat later he deals with the very case which is now before the House, namely, a sale of the property. He says : " The site value of the " land should then be taken to be the purchase-money, less the deductions " authorised by Section 25 (3 and 4) (a)."

Lord Shaw in his judgment deals mainly with the question of the position of feu-duties. But in dealing with increment duty, he says, " when the statute is treating the problem and fact of increment, it is in " the position of laying down, to begin with, the mode of settling a datum " line from which in future years and on future occasions the increment " shall be reckoned."

And in the opinion delivered by myself (in entire agreement, I believe, with the views of the other noble Lords), in speaking of " assessable site " value," I said : " In order to see whether there is any absurdity in this " being a negative quantity it is justifiable, and even necessary, to look to " the way in which the 'assessable site value' so arrived at is to be used for " the purpose of assessment of taxes. When this is done it will be found " that the principal assessment based upon it is that of the increment value

“duty, and that the amount of this duty does not depend upon the actual amount of the assessable site value, but upon its variations. For such a purpose there is no incongruity in the assessable site value being a negative quantity, because a negative quantity is capable of positive variations just as much as is a positive quantity.”

This House, therefore, interpreted the Act as levying the increment duty on the rise in the site value of land. In so doing it was not in any way overlooking or disregarding the fundamental provisions of Section 2 (which is repeatedly referred to in the judgments) as to site value, but was, in my opinion, emphasising them. Those provisions are that “the increment value of any land shall be deemed to be the amount (if any) by which the site value of the land, on the occasion on which increment value duty is to be collected as ascertained in accordance with this section, exceeds the original site value of the land as ascertained in accordance with the general provisions of this Part of this Act as to valuation.” I see in these provisions only an intention to carry into effect the decision of the Act expressed by this House in *Herbert's case* (82 L. J., P. C., 119; [1913], A. C., 326), and, in any case, that decision justifies us in viewing with the gravest suspicion, if not in summarily rejecting, any proposed interpretation of the section which would prevent the calculation which it directs being an estimate of the “site value” of the lands in any sense of the words, and would make it impossible to apply the word “increment” to the subject of taxation.

To explain the bearing of this consideration on the question in issue in the present appeal I will indicate briefly the rival contentions of the parties.

The appellant contends that the scheme of the Act is to ascertain the assessable site value on the occasion when the duty is to be levied in the same way as on the original occasion, with the exception that the “total value”—that is, the actual value of the owner's interest—instead of being determined by a valuation made for the purpose, is determined by the sale price, if the occasion be an actual sale, or by the price at which it appears in the valuation for death duties, in case it is a transfer at death. This is a perfectly reasonable method of determining the site value, and the difference between the value thus found and the original value may rightly be termed the “increment value.”

The respondent's contention, on the other hand, is that you must take no heed of the sale price or probate valuation price in your calculations. You must make an independent valuation of the “total value” as before, and you must use that to find which would be the “assessable site value,” if it were calculated in the same manner as on the original occasion. No one could complain of this if the result were taken as the new “site value,” or, as it has been conveniently termed throughout the argument, the “occasional site value.” It would only be a different way of arriving at the same end, and the difference between the occasional site value thus found and the original site value as recorded might justly be called the “increment” of that value. But the respondents do not take the value thus found as the “occasional site value.” They add to it the difference between the sale price of the whole of the owner's interest in the estate

and what they estimate to be the "total value," and they contend that the sum thus arrived at is what the statute means by the "increment value." The figure thus added has admittedly nothing to do with the site value. The consequence is that what they say is the "occasional site value" is wholly different in its nature from the "original site value," and is not the same thing calculated at a different date. In no intelligible sense is it "site value," and (what is more important) the difference between it and the original site value cannot possibly be termed the "increment" of that value.

I was greatly struck during the argument by the way in which counsel on behalf of the Crown completely disregarded the light thrown on the meaning of the Act by the consistent use of the term "increment" in connection with this duty. The increment of anything is the difference between its value at two different times—it is not the difference between the value of one thing at one time and another and wholly different thing at another time. Thus the difference between the longitude of a ship to-day and the longitude yesterday may fairly be termed the "increment" of that longitude. It may be ascertained to-day by one method, say that of lunar distances, whereas yesterday it was ascertained by another and perhaps easier method, say, by solar observations. But so long as they are merely different methods of arriving at substantially the same thing, the difference between the results is justly termed the "increment" of the longitude. But the difference between the latitude of a ship to-day and its longitude yesterday is not the "increment" of anything. By the use, therefore, of the word "increment" throughout the relevant parts of the Act it declares in an unmistakable way that the subject-matter—the assessable site value—is in its nature one and the same throughout, though the precise method of arriving at its value may vary from time to time according to the material for arriving at that value which the circumstances of the moment provide. And this is no case of a term chosen merely for convenience of drafting. On the contrary, the word "increment" goes to the very root of the matter. Both in the nature and the justification of the new system of taxation the idea of "increment"—unearned increment—reigns supreme. How completely the contention of the respondents contradicts the identity of the subject-matter may be seen from the figures of the present case. They admit that no element of value of the land has changed. The gross value, the total value, the full site value, the burdens are all unaltered, and if the assessable site value had to be calculated now, the figure would be identical with the original site value as recorded. And yet they say that there is an "increment" of £125 on that value, and they seek to tax that "increment."

I have said that the fact that the Act uses the term "increment" to describe the subject of the tax ought to make us reject, or at all events be very slow to accept, an interpretation of the directions for ascertaining site value which would be inconsistent with the natural meaning of the word. But it must not be imagined that the case of the appellant rests solely on this consideration. It is, in my opinion, supported by the language of the Act throughout, as well in the provisions which prescribe the calculations which are to be made to ascertain site value as in those

other parts of the Act which indicate the nature and status of the site value thus obtained.

To establish that this is the case I shall now proceed to examine the specific directions given in Section 2 for the "ascertainment" of "the site value of the land, on the occasion on which increment duty is to be collected"—that is, the "occasional site value." In this examination I shall take, for the sake of simplicity, the case where it is the whole interest, and not merely a part of it, which is being transferred, &c.

It will be remembered that in the definition of "assessable site value" in Section 25 it is represented as being derived from "total value" by making certain deductions. For the purpose of "ascertaining" the "occasional site value" the statute directs that you shall take as that from which deductions are to be made—not the "total value" *eo nomine*—but Section 2 (2) (a) and (b) the amount of the consideration where the occasion is one of an actual sale; (c) the amount of the valuation as ascertained for the purposes of the Finance Act, 1894, where the occasion is one of transfer by death; and (d) the "total value" ascertained according to Section 25 of the Act where the occasion is one of those "periodical occasions" when the duty is levied on corporate or incorporate bodies holding land, such bodies being viewed by the Act as persons who cannot be expected to sell or transfer the land which they hold, and must, therefore, be taxed on stated occasions. From these amounts the "like deductions" are to be made as are directed to be made for the purpose of arriving at the site value of land from the total value.

The first thing which strikes one is that the substituted amounts are in each case actual representatives of the "total value," the only difference being that in the first case the total value is arrived at by what an actual sale has shown it to be; in the second it is arrived at by a valuation of the same subject-matter for the purposes of another statute; and in the third case it is arrived at by the valuation in the precise way set out in Section 25 of the Act. What, then, is the meaning of the provision? It means, in my eyes, that the statute is aiming at the same thing when ascertaining "occasional site value" as when ascertaining "original site value," but that it is availing itself to the full of the special facilities for determining fairly the "total value" which the "occasion" furnishes. If there is a sale, it takes the consideration given as being the "total value," if there has been a valuation for revenue purposes which has been duly proved to be correct, it takes that as being the "total value," and it is only when there has been neither sale nor independent valuation that it is driven to have recourse to a special valuation of "total value" to aid it in arriving at the site value at the moment.

This third case appears to me to give guidance as to the meaning of these provisions which is of special value. In the cases which come under it the "occasional site value" is arrived at in precisely the same way in all respects as if it were "original site value" calculated at the later date. Now these cases do not differ in any way from the others so far as regards the nature of the property or its being subject to the duty. The holders of the land in the cases which come under (d) are neither more nor less

meritorious than the holders in the cases previously dealt with, and there is no sign of any intention in the statute to vary the amount or the incidence of the tax in their case, nor would there be any conceivable reason for doing so. The only differentia of the cases which come under (d) is that the Legislature is unable to avail itself of help or guidance from independent transactions occurring at the moment of levying the duty. It is thus thrown upon its own resources to ascertain "occasional site value," and it does so by treating it as the then value of the same thing as appears in the register of original valuations as "original site value." How can we then admit an interpretation of the provisions in cases of sale or death which would make "occasional site value" in those cases mean something radically and in its very nature different from the "original site value" with which it is to be compared and of which its increased amount is to show the "increment," when we find that the Legislature in this last case—the one in which it is perfectly free to make its choice—treats the two as identical in nature so that their difference is a true "increment"?

The natural construction, therefore, of these provisions of Section 2 is, to my mind, that the total value of the property, as shown by the sales, lease, or valuations made on the occasion (whether those valuations were made specially for the purpose, or for the purposes of the Finance Act, 1894), is to be taken as the "total value" for the purpose of the calculations which are to give the "occasional site value"—these calculations being effected in precisely the same way as adopted originally for the purpose of arriving at the "assessable site value" from the "total value." This does no violence to the language of Section 2, and, indeed, it is the natural and obvious meaning of that language. Indeed, I cannot understand how this interpretation can be resisted so soon as it is realised that the Act, by taking in (d) the "total value" as obtained under Section 25 as replacing the values which are otherwise obtained in the cases coming under (a), (b), and (c), is impliedly given to those values the status of "total values" for the purposes of this taxation.

This simple and rational interpretation clears up all the difficulties. The "total value" is obtained directly from the sale, &c. The "gross value" is then obtained by adding to the total value the capitalised value of the "burdens." The "full site value" is to be obtained (as all parties admit) by direct valuation of the stripped site, and not by calculation. These values are used precisely as in Section 25 (4). In this way the provisions of Section 2 carry out in every way the principle of taxing the "increments" of site value which the House in the Herbert case (82 L. J., P. C., 119; [1913], A. C., 326) recognised as being its intention, and this interpretation renders the language of the Act so far as it relates to increment duty consistent, and such as could fairly be used for the purpose of describing the taxation which it imposed.

I cannot think that the learned Judges, who have in the Court below supported the contention of the respondents, have appreciated the consequences of their interpretation, and how completely inconsistent it is with the object of the Act and its general tenor. To make this plain I will take the figures of the present case, but for the sake of clearness I will

suppose that it was a transfer by death and not by alienation. There is nothing in the Act to make the valuers for probate purposes the same as those for the taxes on land values, and I will take it that it was the valuers for probate (instead of the purchaser) who fixed the value of the whole of the owner's interest in the estate at the actual figure of £750, which was the consideration for the sale. How would the matter stand on the contention of the respondents, which has been supported by the Courts below? It would stand thus: The respondents admit, as they are compelled to do, that the site value has not changed in any way, and that this will be the case whichever valuation you take as correct. But they assert that the Act entitles them to charge upon the difference of the two valuations of the total estate as being "increment of site value"!

I picture to myself how a catechism on the laws of England would read if this be so. *Question*: What is the increment of the site value of land when the value of the site has not changed? *Answer*: It is the difference of opinion of two sets of Government valuers as to the value of the owner's total interest in the estate. Could the force of absurdity go further? Yet this is no ingeniously framed hypothetical case. It gives the plain arithmetical results of the contention of the Crown applied to the figures of the present and all similar cases, and indeed applies in substance to all cases under the Act. The defect in the method of calculation contended for by the Crown is not that the results are sometimes wrong but that they are never right except by pure accident. This Act is no minor or subsidiary Act where one might without disrespect to the Legislature imagine that a mistake might be made by haste or inadvertence. It is an Act introducing a novel form of taxation which was in the future to be one of the main sources of the national revenue. It must have received, as it undoubtedly merited, the closest attention of the Legislature while the Act was passing through it. The object and intention of the Act are clear and have been pronounced to be so by this House, and the point in issue goes to the root of the taxation introduced by it. I cannot bring myself to declare that it has wholly failed to achieve that object or carry out that intention, and further that it has done so in a manner so ludicrous as to make it a laughing-stock to any one who will take the trouble to follow out, to its necessary arithmetical consequences, the construction which is contended for by the respondents.

Counsel for the Crown defend this construction of Section 2 by saying that it follows exactly the language there used. To my mind it has not even that merit. There is nothing to justify calculating the deductions on a basis of a "total value" different from the figure from which these deductions are to be made, which is clearly the figure taken in the clause, as representing "total value." Indeed the phrase, "the like deductions" (not "the same deductions"), points to allowing for the fact that the circumstances are changed and that the deductions are to be obtained by like processes *mutatis mutandis*. This agrees precisely with the construction put upon the words by the appellant. But there is the far weightier argument against the suggested construction to which I have already referred which rises out of the language of the section itself. If it means what is contended for by the Crown, it is not in any sense an

"ascertainment" of the "site value" of the land on the occasion. It leads to something wholly different to and independent of the site value—something which may increase when the site value decreases, and *vice versa*. To shut one's eyes to the expressed object of a clause is a bad preparation for understanding it aright, and between one interpretation which leads to what may rightly and fairly be said to carry out that object, and another which does something irreconcilable therewith, there is no doubt to which preference should be given.

Let me now turn to the other argument urged by the counsel on behalf of the Crown in support of their contention. The main one (and in fact the only substantial one) is that if the appellant's contention be taken the "site value" arrived at is independent of the value of the consideration for the sale or the amount of the probate valuation, as the case may be. Why, then, should they be referred to in the section?

This argument—even if it were correct in its facts—defeats itself. For if we look at the method of arriving at occasional site value under (*d*) we find that this very same thing is and must be the case, even on the contention of the Crown. The "total value" there referred to disappears or becomes immaterial in exactly the same way and to the same extent as does the "consideration for the sale" or the "principal value" in cases (*a*), (*b*), and (*c*). In truth the argument tells against the respondents and not in favour of them. The fact that in (*d*) the "total value" referred to becomes immaterial in respect of Section 2 (2) would lead us to expect that the figures, which in (*a*), (*b*), and (*c*) take its place, would become immaterial in a like way and to a like extent. The fact is that this peculiarity arises solely from the topsy-turvyness of the definitions in Section 25, which, as I have said, make it appear as though the figure which represents "total value" affects "assessable site value," whereas in fact it does no such thing.

But the argument is incorrect in fact. The deductions enumerated in Section 25 (4) (*b*), (*c*), (*d*), (*e*), which are to be made in arriving at "assessable site value," are expressed as being parts of "total value," and therefore the figure which represents that value may very well affect them. It is only when none of these are to be made that the amount taken to represent "total value" has no effect on occasional site value, and then it is right that it should not affect it in the calculations under Section 2 in just the same way as it does not affect "assessable site value" in the calculations under Section 25.

This argument, therefore, breaks down entirely. The facts of the case do not support it, and even if they did the supposed absurdity is not got rid of by the contention of the Crown. Moreover, as I have said, this so-called absurdity is only one in form due to the peculiar shape of the definitions in Section 25 and not to their substance. To put it plainly, the drafting of this part of the Act is such that it is not enough to look at the words alone—you must remember what they denote and must keep present to the mind an intelligent conception of its main principles if a correct construction is to be arrived at. A striking example of this is to be found in this very section. In Section 2 (2) (*a*) and (*b*) reference is made to the "fee simple" of the land, and under (*b*) it is the "value of

"the fee simple" which is to be taken as the figure from which the deductions are made. The natural meaning of the term would be the whole "fee simple" of the land, and this is the meaning of the phrase in Section 25. To give it this signification is quite possible arithmetically, but its consequence would be not only unjust but ludicrous. It would make a man who sells his land pay increment value duty in respect of the capitalised value of the whole of the burdens which exist on that land (which he does not own) as if they were increments of site value. How is it then that in construing the section one is saved from such a blunder? It is solely because one sees the value of the "fee simple" is to take the place of and be treated as the "total value," which is, of course, the value of the burdened fee simple. The section, therefore, leads to absurd consequences unless you realise that there is an intention to make the figure spoken of in (a) and (b) play the part of "total value," and allow yourself to be guided thereby; and that is all that is needed to support the appellant's contention.

But, apart from all direct consideration of the precise language of Section 2, there is a further argument based upon a consideration of the whole of this part of the Act which to my mind forces us to reject the contention of the counsel for the Crown. They would have us construe the language of Section 2 as meaning that "occasional site value" is not a site value at all or alike in its nature to "assessable site value," but on the contrary is a figure arrived at by a prescribed method solely for the purposes of taxation and not representing any element of land value. That is not the lesson taught us by the Act itself. It loyally and consistently treats occasional site value arrived at under Section 2 as being the equivalent of and as being capable of taking the place of assessable site value, and as differing from it not in nature but only in date.

The most striking example of this is to be found in Section 2 (3). It is there provided that, if it can be shown that the site value of the land at the time of any transfer within twenty years before the Act exceeded the original site value as ascertained under the Act, that site value shall be substituted for the original site value for the purposes of increment value duty. The site value at the earlier date is to be arrived at according to the provisions of Section 2 (2)—that is, is to be based on the actualities of the transfer.

Is it possible to conceive that the Legislature would take as an "original "site value" a figure which has nothing to do with the value of the site? This Act lays the burden of the increment value duty on all landowners. It taxes the increment of site value. Is it possible that one landowner should be allowed to start from a figure having no reference to actual site value while others have to start from its actual value? There is no injustice in allowing site value to be arrived at by a more accurate method—one depending more directly on actualities—where the materials for such a process exist, and yet leaving it to be determined solely by valuation where those materials are not at hand. But there is injustice in taxing one man according to the site value of his land and another according to a figure which does not represent that value and has no necessary connection with it, the two cases being distinguished by nothing

in the nature or circumstances of the holding, but by the accidental circumstance of a sale having or not having taken place within twenty years.

Let me give another example of the manner in which the Act testifies by its treatment of occasional site value to its being of the same nature as assessable site value and differing from it only in date. In Section 3 (5) we find provisions for granting a certain allowance on the collection of increment value duty. On the first occasion there is to be remitted an amount equal to 10 per cent. of the original site value of the land, and on any subsequent occasion an amount equal to 10 per cent. of the site value on the last preceding occasion on which duty was collected. This must, of course, be an "occasional site value" calculated according to the procedure of Section 2 (2). It is clear, therefore, that occasional site value is regarded as representing and taking the place of original site value for the substantial purpose of measuring the remission of taxation to be made. Is it conceivable that this should be done if it was a figure which had nothing to do with site value? This reinforces the remarks which I have made as to the provisions of Section 25 (4). The remission on the first occasion for those who come under it would be 10 per cent. of a figure having no reference to the site value of their land, but greater than it, while their brother taxpayers would only have a remission which is based on the true site value.

Other cases could be given, but they may be all summed up in saying that whenever occasional site value is referred to in the Act, it is treated as though it represented assessable site value in its nature and status—in short, that it was in its nature the assessable site value of the later date, although arrived at in certain cases by the use of special material then available.

This brings me to a remark which I would make on the general aspects of this case. Even assuming that the contention of the Crown were correct as to the literal construction of the language of Section 2, it would only mean that this suit is brought to take advantage of an error in drafting. It is clear that the Legislature did not intend any such enactment. Let me give an example of its meaning in quite an ordinary case. Suppose that, while the site value of lands has remained unchanged, the buildings thereon have fallen in value from age, or unsuitability, or any other cause. The estate is sold, say, for £300 less than its original recorded value. The Government valuer thinks that its value has really fallen more than this, say, £500. On the interpretation contended for by the Crown, the owner would have to pay on the £200, the difference between these sums, as increment value duty on the site, although these sums have nothing to do with the site value (which is unchanged), and, alas! have nothing to do with "increment," because it is a case of a diminishing estate. Now, it is certain that no legislature could ever have intended to enact anything so absurd, and that no responsible Minister could have ever asked them to do so. It must be purely a draftsman's error. He has not made his language clear enough to prevent its being supposed to have the absurd signification in question. In such a case ought we not to give great weight to the principle that a statute should be

construed as a whole? The Legislature is more capable of seeing that its true aim is expressed by the general tenor of an Act than of criticising minute details of drafting. We ought, therefore, in this case, to reject an interpretation which is inconsistent with the admitted aim and tenor of the Act, especially when we have at hand an interpretation entirely consistent with it, which, at any rate, is so far a possible interpretation that until the hearing of this appeal it never occurred to me as possible that any one would understand it in any other sense.

The whole Act, therefore, in my opinion, pronounces against an interpretation of Section 2 which would make occasional site value a meaningless abstraction having no connection with site value. What is there to put against this? Though one may not take into consideration that it would be directly contrary to the declaration of the Minister in introducing the Bill, it is permissible to say that one must have lived outside the ordinary life of educated people in England to suppose that any Government or any legislature could have called such a tax a tax on the increment of the site value of land. Moreover, there is no conceivable reason for such an absurd system being adopted. It is impossible even to say that it produces more or less revenue than would be produced by that for which the appellant contends. It only ensures that the revenue is collected in such a way that it cannot be, or be called honestly, a tax on the increment of site values. And after long and careful consideration of the Act I am convinced that the interpretation contended for by the respondents cannot be defended as being in accordance with the true construction of the Act. If read as a whole, the Act, to my mind, clearly means that for which the appellant contends. The same is true if Section 2 be read as a whole. And even if we were to put ourselves into blinkers and shut out all but a small portion of Section 2 and construe it by itself, we could only arrive at the construction contended for by the respondents by forcing the language of the section and shutting our eyes to the fact that it is only the "like" deductions and not the "same" deductions which are to be made. To calculate deductions on one value of "total value," and then to apply those deductions to another and a different value, is not to make the "like" deductions to those made in a process which essentially depends on taking one and the same value of "total value" throughout the process. I see therefore nothing in the Act which requires me to hold that it bears a meaning which would render misleading its clear and repeated professions of imposing a tax on the increment of site value, and I am of opinion that the appellant is right, and that this appeal should be allowed.

Lord Parmoor: This is an appeal which raises the question whether the appellant is liable to pay increment value duty upon the occasion of the sale by him of the dwelling-house and shop known as No. 32, Lansdowne Road, Forest Hall, Northumberland.

The sale was of the fee simple of the land, and the consideration paid, which may be conveniently referred to as the price, was £750. The land was subject to a tithe rent-charge of the capitalised value of £33. The full-site value was estimated at £228, and there was an agreed sum of £90, in respect of works executed, to be deducted before arriving at the assessable

site value on the occasion. The Referee adopted the contention of the appellant that "the fee simple was sold, subject to tithe of £33 capital value, for £750, therefore the gross value, which in this case is the fee simple value free from tithe—see Section 2 (*i*)—is £783"—(paragraph 8 (*a*) (1) of the special case). He further found that at the time of the sale the fee simple of the property, if sold in the open market by a willing seller in its then condition, free from incumbrances and from any burden, charge, or restraint, other than rates or taxes, might have been expected to realise the sum of £658. Neither of these findings of the Referee is in any way conclusive of the question to be decided, which is the construction of the Finance (1909-10) Act, 1910, in order to ascertain in what sense the Legislature has used the words "gross value" in their application to the calculation of an occasional site value to be ascertained in accordance with Section 2 of the Act, when there has been a transfer on sale of the fee simple of the land.

In coming to a conclusion on this point the ordinary principles of construction must be followed. A statute is the expression of the will of the Legislature, and it is the duty of the Courts to give effect to the language in which the will of the Legislature has been expressed. It is not the function of Courts of Law to entertain questions of policy, and I am unable to give any weight to arguments based on the consideration whether a particular interpretation is more favourable to the Crown or the subject. In all cases ordinary words must be interpreted in their natural sense, and technical words in the sense which they have acquired, having regard to the context in which they are found, and to the principle that every section of a statute should, so far as possible, be construed to make a consistent enactment of the whole. As a key to arrive at the interpretation of language used in a statute, it is permissible, and may be necessary, to get a conception of the aim and object of the whole statute, since in this way an interpreter of the statute places himself in the position of those who used the language which he is called upon to interpret, but care must be taken that this is done not to make law, but only to expound it. In the present case the statute appears to me to have been drafted with perfect consistency. Its aim in the sections under review is to impose duties on land values, and to direct the methods of valuation. The language to be interpreted is not difficult if the context in which it is found is fairly considered.

Section 1 of the Act simply denotes the occasions on which the increment value duty may arise, and the rate at which it should be collected. Section 2 contains a definition of the increment value of any land, and the present case largely depends on its proper construction. The increment value of any land is to be deemed to be the amount, if any, by which the site value of the land, on the occasion on which increment value duty is to be collected, as ascertained in accordance with this section, exceeds the original site value of the land as ascertained in accordance with the general provisions of this Part of this Act as to valuation. The contrast between ascertaining site value in accordance with Section 2 and ascertaining site value in accordance with the general provisions of this Part of this Act is essential, and must be followed through the whole process to prevent con-

fusion and inconsistency. The care of the draftsman to avoid such confusion and inconsistency is further illustrated in the last paragraph of Section 25 (4). In each case the words "site value" denote the assessable site value of the land, and may be referred to respectively as the occasional site value and the original site value. To ascertain the occasional site value of land, full directions are contained in Subsection (2). Where, as in the present case, the occasion is a transfer on sale of the fee simple of the land the calculation starts from the value of the consideration for the transfer, in this case the sum of £750. Where the occasion is a grant of a lease, or the transfer on sale of any interest in the land, the value of the fee simple of the land is to be calculated on the basis of the value of the consideration for the grant of the lease or the transfer of the interest. In other words, a capitalised figure is to be ascertained from the actual transaction on the occasion on which increment value duty is due. Where the occasion is the death of any person, and the fee simple of land is property passing on that death, the principal value of the land as ascertained for the purpose of Part I. of the Finance Act, 1894, and where any interest in the land is property passing on that death, the value of the fee simple of the land calculated on the basis of the principal value of the interest as so ascertained, becomes the initial figure in the calculation.

Lastly, where the occasion is a periodical occasion, and there is no transaction on which the occasional site value of land can be based, then the total value of the land on the occasion falls to be estimated in accordance with the general provisions of this Part of this Act as to valuation. The words "total value" are here introduced for the first time, and to ascertain their meaning it is necessary to turn to Section 25. In Section 25 (3) the total value of land is defined to mean the gross value, after deducting the amount by which the gross value would be diminished if the land were sold subject to any of the fixed charges, burdens, or restrictions specified in the subsection. In the present case the only fixed charge is the tithe rent-charge of the capitalised value of £33, so that the total value under Section 25 would be ascertained by deducting £33 from the gross value. In Subsection (1) of the same section the gross value of land is the fee simple value of the land in its then condition, free from incumbrances, and from any burden, charge, or restriction, other than rates or taxes, and this value as ascertained under Section 25 means the amount which the fee simple value of the land, if sold at the time in the open market by a willing seller in its then condition, free from incumbrances and burdens, might be expected to realise. It is argued that, in calculating the occasional site value under Section 2, the method of ascertainment in Section 25 must be followed.

Turning back to Subsection (2) of Section 2, it is evident that total value and the value of the consideration for the transfer of the fee simple of land denote the same thing, namely, the value of the land subject to the incumbrances which the vendor does not sell and the purchaser does not buy. This substantial identity is not affected because the method of ascertainment differs where there has been an actual sale. The only incumbrance in this case is the tithe rent-charge, capitalised at £33, which is not included in the sale price and is excluded from total value. I agree

that it is nowhere said that for the purpose of ascertaining the occasional site value of land the value of the consideration for the transfer shall be substituted for total value, but in my opinion such a direction would be wrong in principle and calculated to lead to confusion. The important factor is that, in a section dealing with valuation, consideration for transfer and total value are treated as equivalent factors in arriving at the site value of land. Section 2 accordingly enacts that, when the value of the consideration for the transfer has been ascertained, it is subject to the like deductions as are made in the general provisions of this Part of the Act as to valuation for the purpose of arriving at the site value of land from the total value. These deductions are specified in Section 25 (4). The first of them (a) is the same amount as is to be deducted for the purpose of arriving at full site value from gross value. No such deduction is made since full site value is ascertained by valuation, but the meaning is clear that, whatever amount denotes the difference between full site value and gross value, the same amount is to be deducted. There is no difficulty in the meaning of full site value. It means the value which the fee simple of the land, if sold at the time in the open market by a willing seller, might be expected to realise if the land were divested of any buildings and of any other structures (including fixed or attached machinery) on, in, or under the surface, which are appurtenant to or used in connection with any such buildings, and of all growing timber, fruit trees, and other things growing thereon. In the present case this value has been estimated on the occasion of the sale at the sum of £228.

The remaining factor to determine is gross value. This is the real test in the case to which the main argument on both sides was directed. It was argued on behalf of the Crown that gross value means an amount ascertained by valuation under Section 25 (1), and that in this case the Referee has found that amount to be £658. If the construction contended for by the Crown is right, then no doubt the figure is £658, but the matter is not concluded merely by saying that the valuation has been made in the actual words of Section 25 (1).

The gross value of land in Section 25 (1) is the value of the fee simple of land free from incumbrances, and from any burden, charge, or restriction other than rates or taxes. This language is unambiguous, whether regarded in reference to the ordinary meaning of the words or as introducing a technical definition. Where there has been no actual transaction, the only way of ascertaining the amount of gross value is by valuation, and in Section 25 (1) the basis of the valuation is the amount which the land might be expected to realise if sold at the time in its then condition in the open market by a willing seller. The appellant does not deny that the gross value of land in Section 2 means the value of the fee simple of land free from incumbrances, and from any burden, charge, or restriction other than rates or taxes, and frames his case on the application of this definition. What the appellant does say is, that the contention of the Crown that the method of ascertaining the gross value of Section 25 shall be applied in Section 2 is not in accord with the directions of Subsection (2) (c), and leads to the confusion and inconsistency which these directions are intended to avoid. The result in the present case would lead, not to the actual fee

simple value of the land free from incumbrances and burdens in its condition at the date of the sale, but to a figure based on a hypothetical estimate, proved by experience to be wrong and inaccurate. If the consideration of the transfer on the sale of the fee simple of the land is £750, and there are incumbrances in the nature of tithe rent-charge to the capitalised value of £33, then the gross value according to the definition in Section 25 is ascertained under Section 2, £783.

The occasional site value of the land ascertained in accordance with the contention of the Crown includes an element of builder's profits, and in other cases might introduce elements wholly independent of the actual site value of the land. On the other hand, the contention of the appellant does eliminate the site value of the land from other elements of value. I have already referred to the paragraph which occurs at the end of Section 25 (4), which excludes from site value, deemed to be assessable site value of the land as ascertained in accordance with this section, the site value of land on an occasion on which increment duty is to be collected. In my opinion the crucial words in this paragraph are "as ascertained in accordance with this section," and the paragraph recognises that the ascertainment of site value in Section 2 proceeds throughout on a different method, as is inevitable when a datum line founded on an actual transaction is contrasted with one founded merely on estimate, which may produce results wholly different from a valuation founded on estimate.

The words "like deductions" in Section 2 in no way conflict with the above construction. I understand the word "like" to mean deductions of an equivalent or corresponding character, and not merely deductions of the same amount. The amount of the deduction is the difference between full site value and gross value, and in order that like deductions may be made it is necessary to ascertain the figures for gross value and full site value in accordance with Section 2, and to apply the difference in the calculation. I cannot agree with the view that this problem can be answered by saying that no gross value need be fixed, since a similar result may be obtained by the simple deduction of the two sums of £33 and £90 from the full site value. It is only by ascertaining gross value in Section 2 that it is possible to apply the principle of like deductions in accordance with the directions of the Act. It follows, in my opinion, that the Referee came to a sound conclusion in accordance with the proper construction of the relevant sections of the Act, without reference to considerations of policy, which are wholly irrelevant.

It was argued against this construction, on behalf of the Crown, that there is no direction to obtain gross value by the addition of two figures. In my opinion no such direction is required. If the gross value of land in Section 2 is the fee simple value of the land free from incumbrances and from any burden, charge, or restriction, then the amount is accurately ascertained by the addition of the sum of £33 and the sum of £750, and the Referee properly regarded it as immaterial whether the arithmetical process is one of addition or subtraction. The important factor is the datum line from which the calculation starts, and the Act provides that, on the occasion of the sale of land in fee simple, the datum line shall be the consideration for transfer.

It was further argued on behalf of the Crown that the contention of the appellant would result in the same site value whatever the consideration for transfer might be. I am not prepared to assent to this proposition in respect of deductions to be made under Section 25 (4) (b), (c), (d); but, whether true or not, it does not appear to me to be material. The same argument is applicable in whatever way the gross value is ascertained so long as any form of calculation is consistently applied. This is evident in the present case, where the sums of £33 and £90 might be deducted from the full site value without any reference to gross value; but this is not the method directed in the Act, and I think that gross value should be ascertained and applied, whether under Section 2 or Section 25.

The attention of the House was directed in the argument both on behalf of the appellant and the respondent to Subsection (3) of Section 2. This section refers to what has been called substituted site value; that is to say, a site value to be substituted for the original site value under certain conditions for the purposes of increment value duty. The conditions arise where it is proved to the Commissioners on an application made within due time that the site value of any land at the time of any transfer on sale within a certain period exceeds the original site value of the land as ascertained under the Act. The provision is also applied to the case of a mortgage. In such a case the site value is to be estimated by reference to the consideration given on the transfer in the same manner as it is estimated by reference to the consideration given on a transfer where increment value duty is to be collected on the occasion of such transfer.

If the argument on behalf of the Crown is accepted, the substituted site value would not be the same thing as the original site value for which it is substituted, but might include, and would include, in such an instance as the present, an element of builder's profits, in "addition" to the stripped value of the land. It is satisfactory to find that the language of the Act does not lead to such an anomaly, and that the drafting of the Act is not open to this criticism.

The attention of the House was further directed to a number of sections which appear to indicate that site value is consistently applied to the value of land, and not to the value of land with an addition of other elements, such as builder's profits. Should these sections come to be interpreted in this House, further consideration may be necessary, and I desire to express no opinion. Section 3 of the Act is, however, directly in point. It contains general provisions as to the collection of increment value duty. In each of the subsections the subject to be taxed for increment value duty is limited to the increment value of land, and in Subsection (5) a reduction is allowed on the first occasion for the alteration of increment duty of an amount equal to 10 per cent. of the original site value of land, and on subsequent occasions of an amount equal to 10 per cent. of the site value on the last preceding occasion. It appears to me that this provision necessarily implies that site value means the same thing on the successive occasions, and that it is only on this basis that the whole scheme of the Act is consistent.

The result of the method adopted by the Referee, which, in my

opinion, is accurate, is to find the site value on the occasion of the sale in fee simple at £105. It is not until this amount has been fixed that the original site value should be referred to, since the two figures fall to be compared in order to ascertain whether there has been an increment value of land on which an increment value duty is payable. The original site value is £105, so that in this case there is no increment value of land, and no increment value duty is chargeable.

In my opinion the appeal should be allowed.

Appeal dismissed.—(84 L. J., K. B., 45.)

[HOUSE OF LORDS.]

INLAND REVENUE COMMISSIONERS v. CAMDEN
(MARQUESS).

[JULY 2ND, 3RD, AND 22ND, 1914.]

Revenue—Reversion Duty—"Total Value" at Time of Grant of Lease
—*Expenditure by Lessee on Property Demised*—"Payments made
"in consideration of the Lease"—*Finance (1909-10) Act, 1910*
(10 Edw. VII., c. 8), s. 13.

The Finance (1909-10) Act, 1910, by Section 13 (1), imposes a reversion duty on a lessor on the value of the benefit accruing to him on the determination of a lease. By Subsection (2) the value of the benefit accruing to the lessor is to be deemed to be the amount (if any) by which the total value of the land at the time when the lease determines exceeds "the total value of the land at the time of the original grant of the lease, to be ascertained on the basis of the rent reserved and payments made in consideration of the lease (including, in cases where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings or to expend any sums upon the property)."

Held, that "payments made in consideration of the lease" could not be restricted to payments made directly to the lessor, but that money expended by the lessee on the property demised prior to the granting of the lease must be taken into account.

Decision of the Court of Appeal (83 L. J., K. B., 509; [1914], 1 K. B., 641) affirmed.

Lord Dunedin: This question arises upon the construction of the thirteenth section of the Finance (1909-10) Act, 1910. That section, by Subsection (1), imposes a duty called reversion duty on "the value of the

“benefit accruing to the lessor” at the determination of the lease. It then proceeds (Subsection 2) to give rules for the ascertainment of the benefit accruing. Paraphrasing its provisions, the benefit is to be found by subtracting the value of the subject at the time of the grant of the lease from the value of the subject at the end of the lease. The value at the end of the lease is to be ascertained in accordance with general rules as to valuation as set forth in another part of the Act; the value at the time of the grant of the original lease is to be ascertained “on the basis of the “rent reserved and payments made in consideration of the lease (including, “in cases where a nominal rent only has been reserved, the value of any “covenant or undertaking to erect buildings or to expend any sums upon “the property).” It is on this latter clause that the present dispute arises; there is no dispute as to the value at the present time.

The facts on which the dispute arises are very simple. The trustees of the Marquess Camden let six tenements to a Mr. Wilson by six leases. The leases were granted “in consideration of the expense incurred by the “lessee in erecting the messuages and buildings hereby demised and of the “rent and covenants on the part of the lessee.” The appellants in these circumstances made the calculation of value by taking 24 years’ purchase of the reserved rent; but made no addition in respect of the expense incurred by the lessee in erecting the buildings. On appeal to the Referee he held that 25 years’ purchase should be taken instead of 24, but in other respects he upheld the assessment, holding in particular that in ascertaining the total value no consideration was to be given for the payments in consideration of the lease.

On appeal to Mr. Justice Horridge, that learned Judge found as a fact that before the granting of the lease Wilson had, in pursuance of his agreement, expended £6,000 upon the works mentioned—that is the erection of the buildings—and confirmed the judgment of the Referee. On appeal to the Court of Appeal that Court held that the £6,000 fell to be added to the capitalised sum of the rents at 25 years’ purchase. The argument for the Crown against that judgment is succinctly stated in the fifth reason of the appeal case, which runs thus:—

“‘Payments made in consideration of the lease’ include only payments, such as premiums, expressed by the lease to be made by the lessee “to the lessor or the persons entitled to receive and give receipts for such “payments.”

I cannot accede to that view. It practically interpolates in the section, after the word “payments,” some such words as “to the lessor,” which are not to be found in the section. What the section does say is “payments in consideration of the lease,” and this lease says that the expenditure (and there cannot be expenditure without payment) is in consideration of the lease. Nor do I think that the ensuing parenthesis causes any difficulty. That parenthesis is to meet the case where the consideration is not expenditure which has taken the form of payment, but is something which as yet exists *in obligatione tantum*. That is sufficient, in my view, to explain the presence of the parenthesis.

I desire emphatically to add that, when a case does arise under the parenthesis, I wish to reserve my opinion, and not to be held as necessarily

agreeing to findings in this case that this rent is not "nominal." Whether this rent is nominal or not it is immaterial to consider, for, in my view, the case does not fall under the parenthesis at all. In my view this ends the case, and I hold the judgment of the Court of Appeal to be right. Another question might have been raised as to whether the whole £6,000 fell to be added. In my judgment no such case was raised by the Crown, and it is too late to raise it now.

I have had the advantage of reading and considering the opinions of Lord Atkinson and Lord Parmoor, and I find that on this matter, had it been possible to raise it, they seem to entertain divergent opinions. In the circumstances I think it best to reserve my opinion altogether until a case arises, if it ever does arise, when the question is brought before us properly on the facts.

I move that the appeal be dismissed with costs.

Lord Atkinson : The main, if not the sole, question for decision in this case is the proper construction of that portion of Section 13 (2) of the Finance Act, 1910, dealing with the method by which the total value of land at the time when a lease of it was originally granted is to be ascertained, and this again resolves itself into the question whether the word "payments," used in the subsection, includes payments made by the lessee, not to the lessor, but for the construction of buildings on the land demised, the erection of which formed a portion of the consideration for the grant of the lease.

The object aimed at by this thirteenth section is to levy a tax on the value of the benefit accruing to the owner, or owners, of the reversion on a lease on the determination of that lease.

The second subsection prescribes the mode in which the value so taxed by the first subsection shall be ascertained. I think that the primary object thus aimed at should, however, be kept steadily in view in construing each provision of the section. It is not accurate to say that the value of this benefit is the difference between the total value of the land at the time when the lease determines and the total value of the land at the time when the lease was granted.

The total value of the land at the time when the lease determined would, under Section 25, practically mean its market value freed from all the rights or obligations ceasing on the determination of the lease, but subject to the rights, obligations, or charges imposed *aliunde*. In order, however, to ascertain the benefit conferred upon the owner or owners of the reversion by the determination of the lease, there must be deducted from this total value, or purchase price, such part of it as is attributable to any works executed or capital expenditure incurred by the lessor during the term of the lease, and also all compensation payable by the lessor at its determination. It will be observed that these deductions in respect of works executed and capital expended are to be made whether the execution of the works or the expenditure of the capital was voluntary or obligatory. These several matters, personal to the lessor, are to be taken into account to diminish in his behoof that total value which the land would have for others. Now, the value of the benefit which is taxed cannot possibly exceed the total, or market value, thus found, of the land. It may, and in most cases must,

be less than it, since the benefit is to be diminished by the deduction from it of the total value of the land at the time when the original lease was granted.

Such difficulty as exists in the cases arises from the looseness of the language used in prescribing the method by which this latter total value is to be ascertained. It is to be ascertained "on the basis of the rent reserved and payments made in consideration of the lease." It is clear, I think, that this must mean payments made by, or on behalf of, the lessee, otherwise they could scarcely be made "in consideration" of the lease. No time is specified when the payments are to be made, no other indication given as to the person to whom they are to be made.

So far as the rent is concerned, it is obvious that the aim of the provision is to get at the total value of the land "on the basis" of what the owner gets for the right conferred by the lease to use, occupy, and enjoy it. The number of years' purchase at which that rent is to be capitalised will, of course, vary according as the rent is high or low, is well or ill secured.

If a premium be paid to the lessor in consideration of the lease, that only differs from the rent in this—that it is an immediate payment of a lump sum instead of an annual payment made during the currency of the lease, and the capitalised value of the rent and the premium are subject to precisely the same considerations. They are payments made, or taken to have been made, to the lessor in consideration of the granting of the lease, moneys which the lessor gets for the use which he gives of the land, the purchase money in fact of that use, and therefore a measure of the total or market value of the land at that time.

Where the payments made in consideration of the lease are not made to the lessor, but made by the lessee to those who have erected buildings on the land, in consideration of which, as well as of the rent, the lease was granted, I quite concur with the Court of Appeal in thinking that they must be taken into consideration in ascertaining this second total value. This outlay presumably makes the rent more secure, and therefore more valuable, and on the termination of the lease, either by effluxion of time or otherwise, the value of the land as it stands may be enhanced by the existence upon it of those buildings; but I think that the benefit which the lessor gets in this case is not equivalent to that which he would receive if, the rent being the same, a premium had been paid to him equal in amount to the sum expended in the erection of the buildings.

In the case of the premium the lessee pays this sum together with the rent for the use of the land, in its condition as granted or contracted to be granted, and it may, therefore, furnish a good measure of the then value. In the second he pays it for the use not merely of the land in that condition, but of the land with the buildings upon it which he himself has erected or will erect. His capital, to the amount of the premium, is finally parted with in the one case; while in the other that which it represents can be enjoyed by him during the term of the lease. The land with the buildings upon it never was, until the termination of the lease, the property of the lessor, free from the lessee's right to use them; he never could have disposed of it with the buildings on it free from this right.

It is not necessary in this case, I think, to decide whether the total value of the land at the time the lease was granted was the capitalised value of the rent, plus the precise sum of £6,000, the cost of the buildings, or whether the basis upon which this total value is to be ascertained is the rent reserved plus the value of the building subject to the lessee's rights, because the case seems to have proceeded upon the assumption that, if the word "payments" was not to be confined to payments made to the lessor, £6,000 was the proper sum to be taken into account, just as if it had been a premium. I concur with the Court of Appeal in thinking that the word "payments" cannot be confined to payments made to the lessor. I further concur with that Court in thinking that it is not at all necessary that payments are to be excluded, though not mentioned in the lease, if they be in fact made. Here, however, it is distinctly stated that the lease was granted in consideration of payments which had been made.

I therefore am of opinion that the order appealed from was right and should be affirmed, and this appeal dismissed with costs.

Lord Shaw : The appeal in this case raises a question with reference to the assessment of reversion duty. That duty is dealt with by various sections of the Finance Act, 1910, and the section with which in particular the House is concerned is Section 13.

The material facts are really not in dispute. In the year 1891 the Camden Trustees made an agreement with one Wilson whereby Wilson agreed to take from them a lease of certain premises comprised in an original and then current agreement at the yearly rent of £125 for a term of 40 years. (I state the arrangement in the most general terms.) By this agreement the lessee undertook to execute certain works to the satisfaction of the trustees' surveyor, and these were specified in a schedule to the agreement. Upon this being done, it was stipulated that a lease should be granted. The properties are six in number, but the conditions applicable are the same in each case, and I treat the transaction as one.

The agreement was subject to the approval of the Court, and this approval was duly obtained. The works stipulated for were completed, and the leases, six in number, were granted in 1892. The consideration for the lease was accordingly twofold—first, the rent reserved; and secondly, the expense incurred in works done. As to the latter, the finding of Mr. Justice Horridge, which was not disputed, is as follows: "Prior to the granting of the leases I find as a fact that W. H. Wilson had expended in pursuance of his agreements to which I have referred, contained in the agreements of June 6, 1889, and February 17, 1891, a sum of £6,000 upon the works mentioned."

The facts being so found, it does not appear to me that any real difficulty arises in applying the language of the statute to them. Reversion duty is under the Act paid on the value of the benefit accruing to the lessor by reason of the determination of the lease, and (Subsection (2)) the value of this benefit shall be deemed to be the amount by which the total value at the time when the lease determines exceeds the total value at the time of the original grant.

It is recognised by the statute that there may be difficulties in going back to the time of the original grant. The difficulties are of this nature,

that it might be impossible to tender any kind of satisfactory proof as to original value apart from these two considerations, namely, the rent reserved and payments made in consideration of the lease.

The contention of the Crown in the present case is compendiously expressed in the fifth reason of the appellant's case to the following effect: "Payments made in consideration of the lease include only payments, such as premiums, expressed by the lease to be made by the lessee to the lessor or the persons entitled to receive and give receipts for such payments." I am of opinion that the fifth reason referred to is bad.

To apply it to the facts of the case, it would mean that the £6,000 expended upon the properties as a part consideration for the lease is to be excluded, because it was not in the nature of a premium or of a sum paid in money to the lessor. The lease, the language of the statute being what I have described, witnesses as follows: "That in consideration of the expense incurred by the lessee in erecting the messuages and buildings hereby demised, and of the rent and covenants on the part of the lessee hereinafter reserved and contained." This is the language of the lease.

In my view the expense incurred by the lessee, actually mentioned as part consideration in the lease itself, falls within the language of Section 13 of the Finance Act—namely, payments made in consideration of the lease. It appears to me to be plain that the statute does not require the payments to be made into the pocket or the bank account of the lessor. The lessor may well get the value in the shape of payments made for what enhances, not the lessor's bank account, but the property demised. I cannot construe "payments made" in the narrow sense of payments in money made to the lessor. It does not appear to me that this is a sound construction of the statute, and I am quite clear that such a construction would be irrational, when once it is conceded that the making of payments or laying out of expense in the enhancement of the property would manifestly be a substantial part of the consideration in fact. The counsel for the Crown could not venture to suggest that, apart from this consideration and this expense incurred, this lease would have been entered into at anything like a rent of £125. There was in fact a moderate rent and a large payment by way of expenditure. I think that the statute clearly means that both these things must be taken into account.

In my opinion it is highly desirable in the construction of this statute to make pronouncements carrying one no further than the actual points which the particular facts raise. I say so in view of an argument presented by the Crown on Section 13 (2) to this effect: It was admitted that the thing to be ascertained was the amount by which the total value on the determination of the lease exceeds the total value of the land at the granting of it. But it was maintained that the limited construction contended for was defended by the words which are quoted in full as follows: "to be ascertained on the basis of the rent reserved and payments made in consideration of the lease (including, in cases where a nominal rent only has been reserved, the value of any covenant or undertaking to erect buildings or to expend any sums upon the property)." It was stated that this parenthesis signifies affirmatively that when, as here, the rent was not a nominal rent,

Parliament has determined that the value of any covenant or undertaking to erect buildings or expend sums shall be kept out of view.

This might result in a serious inversion of the actual considerations which went to make up the bargain of parties ; and at some time a question may arise as to whether the construction of the Crown upon this parenthesis is justifiable. It may, for instance, be said that when the section speaks of payments made in consideration of the lease, it is referring to the view which is taken backward after perhaps a long lapse of years, and dealing not with payments made at the very time of the granting of the lease, but with payments truly in consideration therefor, but actually disbursed subsequent to the time of the lease, but anterior, of course, and it may be by many years anterior, to that period of retrospect to which the statute refers. While payments in consideration of the lease might be, as at its date, either payments made or to be made, nevertheless when viewed retrospectively they are all payments made. This one could figure as an argument in opposition to the Crown. But I think it desirable expressly to avoid any pronouncement upon such a case. The puzzle which it presents may be rectified by Parliament itself.

But the case which is brought before your Lordships' House is not a case of prospective payments, because the fact is that the lease itself bore as a consideration that the expense had been incurred, and this is admitted to be true. When the lease was granted the payment was a payment made, if only "expense incurred" be embraced within such a term. That it should be so embraced I have no manner of doubt.

I think that the judgment of the Court of Appeal should be affirmed with costs.

Lord Parmoor : This appeal raises a question with reference to the assessment of reversion duty, and there is no dispute on questions of fact. In 1892 six leases were granted by the trustees of the estate of the respondent at an aggregate rental of £125, and in consideration of the expense incurred by the lessee in erecting the messuages and buildings demised and of certain other covenants on the part of the lessee, it was subsequently agreed that these leases should be surrendered, and new leases were granted for a term of 40 years from December 21, 1909. It is on the surrender of the six leases granted in 1892 that the occasion arises on which reversion duty is claimed. The learned Judge before whom the case came found as a fact that the lessee had expended the sum of £6,000 upon the works specified. The case appears to have been argued on the footing that if the expense was one which comes within the language of Section 13 of the Finance Act, 1910, there was no question of any less sum than £6,000 being brought into the amount, and for the reasons hereinafter stated I am of opinion that it is necessarily a case in which the sum as a whole should be either allowed or disallowed.

In Section 13 of the Finance Act, 1910, on the determination of any lease of land, reversion duty is chargeable on the value of the benefit accruing to the lessor by reason of the determination of the lease. For the purposes of the section the value of the benefit accruing to the lessor is measured by the amount which the total value of the land at the time the lease determines exceeds the total value of the land at the time of the

original grant of the lease. The total value at the time of the original grant of the lease is to be ascertained on the basis of the rent reserved and payments made in consideration of the lease. There are further provisions to meet the case of a nominal rent, and where the lessor himself is only entitled to a leasehold interest, but in the present case no question arises under either of these heads. Obviously there might be difficulties in estimating the total value of land at the time of the original grant of a lease many years ago, and the section, to obviate such a difficulty, directs a method of valuation which is based on ascertainable statistics.

It can hardly be denied that the £6,000 was a payment made in consideration of the lease, but it was argued that the payments specified in the section were limited to payments made to the lessor, whether in the nature of a premium, or a fine, or some payment of a like character. There is no such limitation in the language of the section, and I can find no reason whatever why it should be inferred by necessary implication. The subject-matter of the section is a duty based on the total value of land, and no element could more directly affect this value than expenditure made on the land in consideration of the grant of the lease. If the lessee was desirous of assigning his interest in the lease immediately after the grant of the lease to him, without loss, he would require the assignee to repay to him the amount which he had expended, and to take over the liability of the payment of the rent reserved or pay its capitalised value. In other words, the total value of the land at that date would be the capitalised rent together with payments made in consideration of the lease.

It is quite true that the expense incurred in building on the property might have been incurred by the landlord, and in this case the sum of £6,000 would not be made in consideration of the lease; but under such circumstances the lessee might be expected to pay as rent not only the £125 but an additional sum proportional to the expenditure of the lessor, which when capitalised should in substance produce the same result—namely, the total value of the land at the time of the original grant of the lease. If, instead of a sum of £6,000 being expended on the land, it was paid away to the lessor as a fine or premium, it would follow that the value of the land at the date of the original lease was less, and this would be appropriately expressed in a diminished rental.

In the present case the whole fee simple of the land, without any expenditure incurred in building, would be less than £6,000, so that in theory that should be a minus rental if a premium or a fine of £6,000 had been paid to the lessor, but the real answer is that no one, as a matter of business, is expected to give as a premium on the grant of a lease more than the whole fee simple value of the land. Assuming, however, a premium of reasonable amount, this premium and the capitalised value of whatever rental might be paid would substantially represent the total value of the land at the time of the original grant of the land, so that in whatever way it may be tested the method directed in the statute would give the total value of the land on the basis of the rent reserved and payments made in consideration of the lease.

I cannot think that any subsequent matter can affect the total value of the land at the time of the grant of the original lease. The buildings may

be burnt down without insurance, or may be found to be useless and unprofitable, but this would not alter either the rent originally reserved or the payments made in consideration of the lease on which the section directs the valuation to be made. In my opinion, the right principle has been adopted in this case—namely, the capitalisation of the rent reserved and the addition of the payment made in consideration of the lease. Any departure from this principle would necessitate an attempt to estimate the uncertain elements which the section properly excludes, and would bring in the manifold difficulties in detail which the section is intended to avoid.

In my opinion the decision of the Court of Appeal is right, and the appeal should be dismissed with costs.

Appeal dismissed.—(84 L. J., K. B., 145.)

[HOUSE OF LORDS.]

INLAND REVENUE COMMISSIONERS *v.* SOUTHEND-ON-SEA
ESTATES COMPANY.

[OCTOBER 21ST, 1914.]

Revenue—Undeveloped Land Duty—Building Land—Lease made before April 30, 1909, and current on April 29, 1910—Power to resume Possession for Building or other Purposes—Liability before Determination of Lease—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 16, 17 (5).

The Finance (1909-10) Act, 1910, by Section 16, imposes a duty on the owners of “undeveloped land” as therein defined. By Section 17 (5) the duty is not chargeable upon agricultural land at the passing of the Act held under a tenancy originally created by a lease made before April 30, 1909, during the continuance of such tenancy. “Provided that “where the landlord has power to determine the tenancy . . . the “tenancy . . . shall not be deemed for the purposes of this provision “to continue after the earliest date after the commencement of this Act at “which it is possible to determine the tenancy under that power.”

Land which was admitted to be undeveloped land within the meaning of the Act, was let for seven years from September 29, 1904, under a lease made in 1906, and current on April 29, 1910, the date of the passing of the Act. The lease reserved to the lessors power, upon giving one month's notice to the tenant, “to enter upon and resume possession for building or “other purposes of any part or parts of the said land.” The lessors had no intention or wish to resume possession for building or any other purpose before the determination of the lease.

Held, that the land was not liable to duty before the determination of the lease under Section 17 of the Act, as the right to resume possession never arose, for the power could only be exercised in an event which had not happened—namely, an intention or wish on the part of the lessors to resume possession for building or other purposes inconsistent with the use of the land as agricultural land under the lease.

Decision of the Court of Appeal (83 L. J., K. B., 611 ; [1914], 1 K. B., 515) affirmed.

Earl Loreburn : In my opinion the decision of the Court of Appeal was perfectly sound. Undeveloped land duty is claimed by the Attorney-General. It is not payable on land which was under a lease made before the Act, but there is a proviso that this exemption is not to arise where the landlord has power to determine the tenancy. Now here the lease enables the landlord to resume possession for building or other purposes, which means, in my opinion, purposes of the same kind. It is admitted that the landlord had no such purpose. Under these circumstances had the landlord, in this case, power to determine the tenancy ? I think that he had not. This power only arose when there was a purpose. If in an action between himself and the tenant the landlord has said, "I wish very much "to determine, but I have no purpose within the covenant," he would have been restrained from determining the lease. In fact he had not power to determine the lease accordingly. At the end of the proviso there are words to the effect that the tenancy shall not be deemed to continue after the earliest date at which it is possible, after the commencement of this Act, to determine the tenancy under that power. I do not think that it is possible to determine the tenancy, unless circumstances exist which would enable the landlord to support his determination in a Court of Law.

The Solicitor-General has argued that the landlord had the power because, if he resolved upon the purpose, he would then possess the power, and it would be in his power to resolve the purpose. I do not agree with that argument. The statute says that he shall have power to determine, and if he has not the purpose he has not the power to determine, even though he may have the power to form the purpose.

Lord Atkinson : I concur. I think that the judgment of the Court of Appeal was sound, and that the reasoning on which the learned Lords Justices based their argument is convincing.

Lord Parker : I agree. I will only add this—that I think, on perusing the section, that it is reasonably clear that, in order to bring the case within the proviso, there must be a power of determining the lease which is exercisable immediately, although, of course, the section itself contemplates that the operation of the power may be only to determine the lease at a future date, because it refers to the earliest date at which it is possible to determine it under the power. If that be the case, not only must the power be exercisable immediately, but in the present case, in order to bring that about, there must exist a certain state of circumstances, and that state of circumstances must be that there must exist a *bona fide* intention on the part of the landlord to use the land for certain definite purposes. It is admitted that there was no such intention, and, therefore, though there may be a power in the sense which the Solicitor-General has mentioned, there is no power exercisable immediately, and therefore the case is not within the proviso.

Lord Sumner and Lord Parmoor concurred.—(84 L. J., K. B. 154.)

[HOUSE OF LORDS.]

COMMISSIONERS OF INLAND REVENUE *v.* WALKER.

[DECEMBER 3RD, 1914.]

Increment Value Duty—Occasional Site Value—Mode of Calculation—Sale at Higher Price than Valuer would have expected—Goodwill—Matters Personal to Owner or Occupier—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 1, 2, & 25.

In June, 1911, a property, of which the original values had been fixed as follows, viz.: Gross value £405, total value £400, full site value £25, and assessable site value £20, was sold for £650 to a purchaser who had for many years carried on a draper's business in a shop in the premises and also occupied another portion as a dwelling-house. The Commissioners of Inland Revenue claimed that the site value on the occasion was £270. They arrived at this figure by deducting from the purchase price of £650 the sum of £380, being the difference between the original gross value and the original full site value. An appeal was taken to a Referee, who fixed the site value on the occasion at £70, allowing as deductions from the purchase price (1) the sum of £400, being the difference between his estimate of gross value on the occasion (£475) and his estimate of full site value on the occasion (£75), and (2) the sum of £180 for goodwill or other matter personal to the occupier. The Referee's award was affirmed by the Valuation Appeal Court.

Held (affirming the judgment of the Valuation Appeal Court), (1) that in making deductions under Section 2 (2) the gross value on the occasion was to be ascertained by valuation, (2) that the proper mode of calculating the site value on the occasion was to deduct from the purchase price the difference between estimated gross value and estimated full site value, and (3) (reversing the judgment of the Valuation Appeal Court) that in the circumstances no deduction should be made for goodwill or matters of a personal nature, and accordingly the site value on the occasion was £250.

Lumsden v. Commissioners of Inland Revenue (1914), A. C., 877, followed.

Full reports of the earlier stages of the case will be found *ante*, pp. 9 and 88. The Commissioners appealed to the House of Lords. The following judgments were delivered.

Earl Loreburn: I regard this case as concluded by the decision of this House in the *Lumsden* case. In view of the opinions of your Lordships, which I have had the advantage of reading in print, and in which I concur, it is not necessary for me to enter upon the consideration of this complicated Act, for all that I have to say is better expressed in those opinions. I understand that the question of costs is settled between the parties.

Lord Atkinson: As the authorities must now be taken to stand, I think the present is a perfectly plain case. The consideration for the sale of this property, the increment value of which is to be determined with a view to its taxation, is £650.

The market value of that same property, within the meaning of the

twenty-fifth section of the Finance Act of 1910, was fixed by Mr. Binnie, the Referee, at £475, the total value at £470. The main question for decision is which of these two sums—the purchase price or the estimated market value, *i.e.*, the sum which in the open market would on sale presumably be paid for it by a willing purchaser—is to be taken as its gross value within the meaning of the above-mentioned section.

It must now be assumed that according to the decision of this House in *Lumsden v. The Commissioners of Inland Revenue* ([1914], A. C., 877) the estimated value, £475, and not the purchase price, £650, is to be so taken. Though the noble Lords who heard that case were divided in opinion equally, the opinion of those who voted in the negative on the question being put, that the judgment appealed from be reversed, must be taken as the decision of the House. (*Beamish v. Beamish* [1861], 9 H. L. C., 274). Well, if that be so, then, so far as the first point relied upon by the respondent is concerned, the contention of the Crown must prevail, and the occasional site value be fixed at £250, the increment value at £230.

These figures are set out at page 24 of the case stated, and so far as they go, subject to the second point raised, cannot be questioned.

This second point is this: Section 25 (4) directs that any part of the total value of land attributable to "goodwill or any other matter which is "personal to the owner or occupier or other person interested for the time "being in the land" is to be taken into account in estimating the total value.

It was urged that the purchaser in this case who happened to carry on the business of a draper in a shop forming portion of the premises, either from his aversion to be disturbed in his occupation, or from his being attached to the premises, paid for them a sum of £180 in excess of their market value, as estimated, and that this sum should be deducted from the total value £470.

It is a sufficient answer to this contention to say that the point does not arise on the facts of the case. The supplemental statements of Mr. Binnie, the Referee, to be found at page 16 of the special case stated, cannot, in my view, with any regard to the ordinary meaning of the language, be styled findings of fact. He says he was unable to get any statement from the purchaser as to what was in his mind when he purchased the property, and that no other person could give him that information. He then proceeds:—

"I have, therefore, had to form my conclusions on the matter as best I "could. After full consideration, I am satisfied as matter of fact that "in paying the purchase price of £650, James Burns Walker was actuated "by some one or other of the considerations alleged in contention (b) of "the original appellant. Further, I am of opinion that in law the facts "warrant a deduction in respect of some such personal element from the "purchase price, under Section 25 (4) (d) of the statute. Further, I "consider, assuming such a deduction competent in law, that the sum of. "£180 should be allowed in respect thereof. *For the reasons stated "above I was not able to arrive directly at the sum just mentioned; I "could only arrive at it by ascertaining to the best of my ability the "market value of the subjects, and then taking the difference between*

"this and the consideration on sale as necessarily the proportion of the consideration on sale given for the personal element, the figures of the calculation being" (The italics are mine.)

That amounts simply to this, that he surmises that the purchaser gave £180 more than his own estimate for the property for some such reason as is mentioned, but save by that surmise he cannot give the amount due to those undisclosed motives.

That does not amount to a finding that any portion of the total value, or any other value, is directly attributable to the goodwill or other matter personal to his occupation of portion of the property. The second point relied upon does not, therefore, arise upon the facts of the case.

The whole of the gallant effort (on the part of his client) of the learned counsel who appeared for the respondent consisted, in reality, in an attempt to make the gross value and the purchase price convertible terms. But that is precisely what this House has decided cannot be done.

In my opinion, therefore, the contention of the Crown is clearly right. The judgment of the special tribunal before which the case came was erroneous, and this appeal should be allowed; but, having regard to the fact that the case was decided in Scotland before the case of *Lumsden v. The Commissioners of Inland Revenue* had been decided in this House, I think the Crown should pay the respondent's costs of this appeal when taxed and ascertained, and that each party should abide his or her costs in the Court below.

Lord Parker of Waddington: It is quite clear that occasional site value on a sale of land is, by virtue of Section 2 (2) (a) of the Finance (1909-10) Act, 1910, the consideration for the sale—subject to the like deductions as are made under Section 25 (4) in arriving at original or assessable site value.

The first of these deductions is the difference between gross value and full site value. It was held in the case of *Lumsden v. The Commissioners of Inland Revenue* ([1914], A C., 877) that for the purpose of ascertaining the amount of this deduction the gross value as well as the full site value on the occasion of the transfer must be determined by a process of valuation, and that it would be wrong to take the gross value as the consideration for the sale plus the capitalised value of the burdens subject to which the land was sold; and similarly that, for the purpose of ascertaining the amount of the second, third, and fourth deductions, the total value must be ascertained by valuation, and cannot be taken as the consideration for the sale.

This decision is one of far-reaching importance. It converts the increment value duty imposed by the Act into a duty which is wholly independent of any increment value at all, and it enables the Crown on any sale of land to exact as increment value duty one-fifth of the sum by which the actual consideration given by the purchaser may in the opinion of the valuing authority have been too large—even though the original or assessable site value may have remained the same or have actually decreased.

Under these circumstances I can only regard it as unfortunate that the case fell to be determined on the principle that where your Lordships are equally divided in opinion the decision of the Court below must be

affirmed, more especially as I find it difficult to reconcile the decision with that view of the Act which was unanimously adopted by this House in *Herberts' Trustees v. The Commissioners of Inland Revenue* ([1913], A. C., 326). It is, however, well settled that a case decided on the principle to which I have referred is as binding upon this House as a decision pronounced *nemine contradicente* (*Attorney-General v. The Dean of Windsor* [1860], 8 H. L. C., 369), so that the present respondents are precluded from reopening the question, although, had their appeal been heard first, there might well have been a binding decision the other way.

It follows that, the gross value of the land in the present case having been determined by the Referee at £475, notwithstanding the consideration of the sale was £650 and the full site value having been determined at £75, the amount to be deducted from the £650 by virtue of Section 25 (4) (a) is £400 only. And it equally follows that the respondent can make no further deduction from the £650 under Section 25 (4) (d) unless she can prove that some part of the total value of the land, as estimated by the Referee, namely, £470, is directly attributable to one or other of the matters referred to in Subsection (d). It being quite clear that no part of this £470 is so attributable, the respondent is precluded from claiming any deduction under this head.

It was suggested by the respondent that on a true reading of the findings of the Referee he did in reality estimate the total value of the land sold at £650 and not £470, and the gross value at £655 and not £475. I find it impossible so to read these findings, nor do I think that any argument based on a contention that under the circumstances of the land having actually realised £650 the Referee could not find the total value at less than £650, could be accepted without wholly disregarding the decision in *Lumsden v. The Commissioners of Inland Revenue*.

In my opinion, therefore, the appeal must succeed. The Crown has agreed to pay the respondent's costs of the appeal, and under the peculiar circumstances of the case I think that your Lordships should direct each party to bear his own costs of the proceedings before the Referee and in the Courts below.

Lord Sumner : Upon the facts found in this case the main question is clearly the same as that raised in the case of *Lumsden*, and is concluded by your Lordships' decision upon that occasion.

Further, to my mind, the facts do not raise the respondent's contention that something should be deducted from the total value "for goodwill or "any other matter which is personal to the owner, occupier, or other "person interested for the time being in the land." Such a deduction is only warranted in respect of "any part of the total value which is proved "to the Commissioners to be directly attributable" to such matters, and, as I read it, the case stated admits frankly that no proof was obtainable upon the point, and that the conclusion upon it in favour of the respondent was only a plausible speculation as to the purchaser's motives.

I think that the Crown is entitled to succeed on this appeal.

Lord Parmoor : The main point in this case, the method of ascertainment of site value on the occasion of a transfer, is not open to argument after the decision of this House in the case of *The Commissioners of Inland*

Revenue v. Lumsden. The result of the decision in that case was in part to levy increment value duty on builder's profits. In the present case the Referee found, so far as it was a question of fact, that the site value of the land on the occasion was £70. The effect, however, of the Lumsden decision is to include in the valuation of site value, and to subject to increment value duty, a sum of £180, paid partly by family affection towards a brother's widow and partly by fear that if the property was acquired by an outsider the occupier might be compelled to quit the premises he had long occupied, and in which he carried on business as a draper.

I expressed an opinion in the Lumsden case that the relevant sections of the Finance Act, 1910, if properly construed, did eliminate from the site value on the occasion of a transfer all the factors which had not entered into the calculations of the original site value, in which case the increment value duty would be levied on an increment in value of the same interest between the two dates, but it would be of no purpose to repeat the reasons on which that opinion was based. The counsel for the respondent very properly admitted that he was precluded from questioning the decision in the Lumsden case, and raised three points which he argued that decision did not cover.

The first point was that by arrangement the Inland Revenue authorities had agreed to accept certain figures as the basis of valuation and that they could not now be heard to put forward different figures. I can find no evidence of any such arrangement in the correspondence to which the attention of the House was directed.

Secondly, it was argued that the valuation of the Referee was not properly made, in that he excluded from consideration the actual transaction of June 9, 1911. I think it is clear from the statement of the Referee that he did not exclude from his consideration the sum of £650 paid as the consideration for transfer on June 9, 1911, but held that for special reasons this sum was in excess of the market value. It is difficult to think that any Referee would refuse to regard as relevant evidence the actual sum paid on a recent sale of the land which he is called upon to value. It is a very different matter to say that the Referee is bound to accept the amount of the consideration as the market value, and unless the argument for the respondent is carried to this length it fails to show that there is any ground for the suggestion that the Referee neglected any relevant consideration in fixing the market value.

In the third place, it was urged on behalf of the respondent that Section 25 (4) (d) justified a claim to deduct the sum of £180, or some part thereof, as expenditure attributable to goodwill or some other matter personal to the owner, occupier, or other person interested for the time being in the land. This section, however, only allows such a deduction if the amount claimed to be deducted is included as part of the total value. In the present case no part of the sum of £180 has ever been included in the estimate of total value, and the claim for deduction under such circumstances appears to me to be inconsistent with the whole framework of Section 25 of the Act of 1910.

The appellants are entitled to succeed, having a decision of this House in their favour.—([1914] 2 S. L. R., 383.)

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THE FINANCE (1909-10) ACT, 1910, PART I.

REPORTS OF APPEALS HEARD BY REFEREES

SPECIALLY PREPARED FOR

*The Surveyors' Institution, the Auctioneers' and Estate Agents' Institute,
the Land Agents' Society, and the Central Land Association*

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TOGETHER WITH

REFERENCES TO DECISIONS OF THE COURTS OF
LAW UNDER PART I. OF THAT STATUTE.

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THE FINANCE (1909-10) ACT, 1910.
PART I.

REPORTS
OF
APPEALS HEARD BY REFEREES.

Before ROBERT W. WALKER, ESQ., *Referee*, 17th July, 1914.

SIR ROBERT MUIR MACKENZIE OF DELVINE, BART., v. THE COMMISSIONERS OF INLAND REVENUE.

ESTATE DUTY—PRINCIPAL VALUE—SALE THROUGH ESTATE AGENTS
—SUBSEQUENT RE-SALE AT ENHANCED PRICE—OPEN MARKET
—EXPERT EVIDENCE—FINANCE ACT, 1894 (57 & 58 VICT., C. 30),
S. 7—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., C. 8), S. 60.

After the death of the proprietor, a landed estate was put into the hands of estate agents for sale, and was sold at £65,000 one year after his death. Seven months later it was resold privately for £72,000. *Held*, that the principal value at the date of death was £65,000. *Observations* by the Referee on the leading of expert evidence and the meaning of "open market."

Sir Alexander Muir Mackenzie, heir of entail in possession of the lands and estate of Delvine, Perthshire, died on June 25, 1909. Sir Robert Muir Mackenzie, who succeeded as next heir of entail, immediately decided to sell the estate, and instructed Mr. P. D. Malloch, estate agent, Perth, to inspect it and report on its value. Mr. Malloch, after inspection, estimated its value at £57,675, but stated that, given time and opportunity to remedy certain defects, the estate might, if judiciously managed, yield a price of £65,000 in the open market. In the autumn of 1909 Sir Robert instructed Mr. Augustus Grimble, estate agent, London, and Mr. Malloch to sell the estate at £65,000. These gentlemen prepared particulars of the estate and spread them broadcast among likely purchasers without discrimination, the price being stated at £65,000; but no advertisement was inserted in the public press. In April, 1910, Mr.

Malloch entered into negotiations with Mr. James W. Leeming, one of the persons to whom he had sent particulars. Mr. Leeming, before discussing the price, consulted his own valuer, Mr. Alexander Guild, W.S., Edinburgh, who in May, 1910, estimated the fair market value to be £65,700. Immediately thereafter Mr. Malloch and Mr. Leeming entered into negotiations, and a sale of the estate was arranged at £65,000, subject to the approval of the Court in terms of the Entail Acts. The Court, in dealing with the petition for approval, remitted to Mr. W. M. Stewart of Freugh, Colinton, to inspect and report on and value the estate on behalf of the Court. Mr. Stewart did so on August 20, 1910, and reported to the Court that in his opinion its value then was £58,000, but in view of the actual price obtained for it he felt bound to accept £65,000 as its value. In the course of further proceedings a remit was made to Mr. A. Agnew Ralston, factor, Philpstoun, who valued the estate at £59,408.

Between the date of Sir Alexander's death and the date of the conveyance to Mr. Leeming certain improvements were made on the estate by Sir Robert costing £700. In December, 1910, Mr. Charles G. Ogilvie returned from abroad, and consulted Mr. Malloch about purchasing an estate. Mr. Malloch mentioned to him that the estate of Delvine had been sold to Mr. Leeming at £65,000, and that possibly Mr. Leeming would resell if he got a handsome bonus. Mr. Ogilvie entered into negotiations with Mr. Leeming's agents, and ultimately purchased the estate from him at £72,000. In satisfaction of the price Mr. Ogilvie took over an existing bond and disposition in security for £40,000, granted a bond and disposition in security to Mr. Leeming for £30,000, and paid £2,000 in cash. The sale to Mr. Leeming and the sale to Mr. Ogilvie were the only sales of the estate for upwards of a century. In the provisional valuation the total value of the property was entered at £72,000, and this figure had not been objected to by Sir Robert or his agents. The Commissioners maintained that the principal value at Sir Alexander's death was £72,000.

The Referee decided that the principal or total value of the estate at the date of Sir Alexander's death was £65,000. He found the appellant entitled to expenses, and certified Mr. P. D. Malloch, estate agent, as an expert witness.

In a Note to his award the Referee, after stating the facts of the case and giving his impressions of the property, said :—

Expert evidence was heard, and I was asked by the appellant to certify as skilled witnesses the following—Messrs. Stewart, Ralston, Guild, and Malloch. I do not feel justified by my reading of my instructions to do so. I feel that a referee is a competent valuer himself, and does not require expert advice. I admit that evidence as to the River Tay from Mr. Malloch, who has an intimate knowledge of this river, was most useful, and I therefore certified him ; otherwise any evidence led was of a nature, I hold, brought by the appellant trying to help his case.

I should like to add a word regarding a very interesting point which arose.

Mr. Blair, the chief valuer, maintained that £65,000 was not the true

test of the market value, that the estate was not put up to public auction, and that practically the first offer which was got was taken. Really, it amounts to this : Was the property sold in the open market by its being not put up to public roup but only placed in the hands of estate agents? I have considered this matter, and I am convinced that although there was no public auction, reasonable means were taken to test the market. I am of opinion that estate agents very often make more of the sale of a property than a public roup, as the market is often spoilt by the upset price not being bid, and a private tender is the final upshot.

The estate, after having been advertised in the way mentioned, namely, by being put in the hands of the estate agents whose business is to be intermediaries between a seller and a purchaser, as the case may be, and the public, fetched the price of £65,000 in the open market, while the circumstances which produced the price of £72,000 were of a very special, peculiar, and exceptional nature. After going carefully over the estate my conclusion as to its value was £63,250, but in view of the fact that £65,000 had been obtained in the open market, I feel bound to accept that figure as its value.

For the appellant : McCash & Hunter, Perth.

For the respondents : Alexander Blair, Chief Valuer for Scotland.

Before J. M. CLARK, ESQ., Referee, 8th and 9th October, 1914.

EARL OF ELDON *v.* THE COMMISSIONERS OF INLAND REVENUE.

VISCOUNT BOYNE AND OTHERS *v.* THE COMMISSIONERS OF INLAND
REVENUE.

PROVISIONAL VALUATION—LAND WITH SUBJACENT MINERALS—
FINANCE (1909-10) ACT, 1910, SS. 23 (2), 25.

These were appeals by the Earl of Eldon, as tenant for life, and by Viscount Boyne and others, as trustees of two settlements, against a valuation of a portion of Lord Eldon's Chilton Estate known as Great Chilton Farm, Durham. Both parties appealed against the provisional valuation on questions of principle, but on different grounds, it being to Lord Eldon's interest to keep down the value of the surface property, and to the trustees' interest to keep it up.

Mr. Cartmell said the surface and minerals had been separately valued under Section 23 (2), and the figures were not disputed. The farm was let on a yearly tenancy, and the coal and fireclay were comprised in a mining lease, which took in the whole of the Chilton Estate. There was limestone on the farm, which was not at present let or being worked. Lord Eldon considered it to be of considerable value. In addition to its use for agricultural purposes the farm had building capabilities. A con-

siderable amount of building had taken place on neighbouring land. The questions for the Referee to decide were :—

- (1) What land was to be treated as in the market on April 30, 1909, and what persons were to be included in the category of possible purchasers ?
- (2) What rights and liabilities were to be assumed in regard to minerals and surface respectively ? Were the minerals to be treated as bound to give support to the surface, or were they to be treated as capable of being worked out regardless of the effect upon the surface ?
- (3) How was the deduction in respect of tithe to be arrived at ?
- (4) How was the deduction in respect of redeemed land tax to be arrived at ? The land tax had been redeemed in respect of the land in question, and what the Referee had to determine was the sum to be deducted from the total value under Section 25 (4) (*d*). The Government valuers had in a rough-and-ready way taken the amount actually expended, and the question was whether that was a legal and correct way of dealing with the matter ?
- (5) Whether the area of the roads should be included in the item of the assessment ? The provisional valuation gave the acreage exclusive of the roads, and the point was whether there should be included the full area of so much of the roads as lay entirely within the farm and the area of those roads, or that road upon which the farm abutted ?
- (6) Whether in ascertaining the agricultural value they should add what had been deducted in respect of tithe and fee farm rents ?
- (7) Whether it was possible to make a valuation of the surface without at the same time making a valuation of the minerals so far as they had to be valued under the Act ?
- (8) What was to be included in the term “minerals,” as minerals under Section 23 (2), which stated that all minerals should be treated as a separate parcel of land.

Lord Eldon's settlements were two in number, the first one being dated June 30, 1869. It was made on his marriage, when he was the owner of the fee simple of the whole of the property, which he conveyed to trustees. Excepted from the settlement was the whole of the mines and minerals with the fullest possible powers to work them. Lord Eldon could work them as he thought fit without regard to the surface. If he wished he could let down the surface without paying compensation. Another settlement was made in 1898, which left to Lord Eldon, during his life, the right to work out the minerals without regard to the surface. The Government valuers were given a list of instructions by the appellants as to how to treat the land and the minerals underneath. In their valuations they assumed that other surface property was in the market, but Lord Eldon contended that there was no other property in the market. To arrive at

the agricultural value they took the total value and deducted the building and sporting values. They took the wrong figure from which to make those deductions. Total value was arrived at by deducting from gross value, the tithe, fee farm rents, and the footpaths, and they ought to put back the amount of the tithe and the fee farm rents, when finding the value of the land as agricultural land. The fact that the land had to pay either tithe or fee farm rent was absolutely immaterial for the purpose of saying what the value of the land was as agricultural land and for agricultural purposes. Tithe and fee farm rent were practically in the same position as a mortgage. If a piece of land was subject to a mortgage of £5,000 one would not deduct that £5,000 for the purpose of finding the agricultural value.

Forty-five alternative valuations had been prepared and agreed, based on varying assumptions as to what, if any, surrounding surface land and subjacent and adjacent minerals would be in the market for the hypothetical purchaser to acquire on April 30, 1909, and what right of support, if any, should be taken into consideration with regard to the item of valuation. Lord Eldon contended that only the item of valuation, with no right of support, must be considered to be in the market on that date, and therefore the property was not so valuable as the Commissioners contended.

He withdrew his question as to whether it was possible to make a valuation of the surface without at the same time making a valuation of the minerals, so far as they had to be valued under the Act. With regard to the meaning of minerals, he proposed that for the purposes of this case they should be held to mean all substances in the earth apart from the surface soil; but as a practical matter they were to be treated merely as consisting of coal, fireclay, sand, and limestone, and any other substances, if any, capable of being turned to commercial use.

Mr. Kingdon accepted the definition; and, as to tithe, it was agreed that the area over which the tithe was charged covered the sites of the roads, making a total of 374, instead of 368, acres, and that the Referee should amend the provisional valuation accordingly.

Mr. Cartmell said the Referee must assume the vendor was selling only the property in question, not other properties or minerals as well. The Referee could not constitute himself adviser to Lord Eldon as to how he should sell his estates. His contention was that the surface and minerals must be taken separately; or alternatively, the terms of the settlements must be looked into, though that contention was destructive of his main contention. The Referee could not assume that the surface-owner was entitled to compensation. The parties were in substantial agreement as to how the deduction for tithe should be made; they apportioned the tithe between the building and agricultural land; the owner would redeem the tithe on the building land at 25 years' purchase; as to the agricultural land, where the owner would not redeem, they took the percentage of the current rate in 1909, and capitalised it at the number of years' purchase at which one would capitalise the rental. They also agreed that if the Referee held that the value which emerged from the redemption of the land tax, as directly attributable under Section 25 (4) (d),

was £229, that would be a constant and stable deduction on all occasions. Agricultural value was the value of the land as land, and the charges which had been deducted to arrive at total value must therefore be added to it. Fixed charges, though paid annually, were merely items which brought down the price paid by a person who had to keep them down; they did not decrease the value of the land itself.

Mr. Konstam said that the trustees relied on a valuation arrived at on the supposition that the surrounding property, the upper and under surfaces, were in the market, and that the minerals could be worked without compensation. The Referee must assume a purchase on April 30, 1909, and that the vendor and purchaser would impose reasonable conditions, and act in conformity with the law. In this case there was a lease of certain of the minerals underlying the farm; the Commissioners maintained that the lease must be taken to subsist and that the valuation of the surface must be made subject to that lease; but he submitted that the existence of the lease should not affect the Referee's mind. The words "in its then condition," in Section 25 (1), referred to physical condition, and the words "at the time" did not allow one to bring in the actual letting. One was entitled to assume other willing sellers of the surrounding lands, and other willing sellers of the minerals under this and other lands. One was not bound to look at surrounding lands or subjacent minerals and ask whether they were let. Whether there were leases of minerals on adjoining lands was of no importance, because the fee simple of the land was the thing to be valued. In this case it happened to be known that the minerals were let, but there might be no knowledge of the fact. It followed from Section 23 (2) that one was not entitled in this inquiry to look into the rights affecting the subjacent minerals. There was no direction in Section 25 to assume that this one particular piece of land was the only piece in the market on April 30, 1909. The trustees would be advised to sell the land in a block and also to sell the minerals if they wanted to sell one part. A willing seller must not be a person forced to sell, but a person acting as a reasonable business man. He associated himself with Mr. Cartmell on the question of tithe and fee farm rent with regard to agricultural value; Mr. Kingdon said that of the questions propounded for decision by Mr. Cartmell in his opening, (3) (4), (5), and (8), had been agreed, and (7) had been abandoned. Dealing with (6) by Section 26 (1) one had to compare agricultural value with assessable site value. A fixed charge was dealt with quite differently to a mortgage throughout the Act. Fixed charges came off in total value and they included tithe and fee farm rent; from total value one made further deductions to get at assessable site value, and it was unreasonable to compare the assessable site value which was clear of all these charges with an agricultural value increased by the fixed charges. "Land" must be interpreted as a term of law, and not as a physical subject-matter.

In this case they had to value a surface and were not concerned with the value of the minerals; there was in the mineral sections no qualification of the way in which the surface was to be valued; the sections were kept in watertight compartments, and the only one involved was Section 25 (1).

They were directed to value fee simple in possession in its then physical condition free from burdens, &c., and the land could not be valued as subject to diminished rights owing to the owner of the minerals. The fixed subject-matter to be valued naturally comprised the right not to be let down, otherwise the owner had not the normal rights of a fee simple owner. The Commissioners supported the valuation made on the assumption that any surrounding property belonging to the same owner, the upper and under surface and the minerals, were all in the market, and that the surface had a right of support as an ordinary incident of property. The particular piece of land must be taken separately, but it might be assumed that the owner would sell the surrounding property, also if it would enhance the value of that piece, though all the property could not be treated as one lot. With regard to Question (1): What land was to be treated as in the market on April 30, 1909; they had to treat all land as being as it was on that date; it was not necessary to expropriate the owner of this land, the owner must be regarded as the seller. The only violation of the existing circumstances on that date was taking the fee simple in possession free from incumbrance, and that was in order to get a common measure or standard for all land. There was no analogy between this Act and rating cases, in which one was considering what the land would be worth to a yearly tenant. The cases of *Hornby v. The Commissioners of Inland Revenue* (L. U. Reports, vol. i., p. 104), *Glass v. The Commissioners of Inland Revenue*, *Buchanan and Clay v. The Commissioners of Inland Revenue* (L. U. J., June, 1914, p. 39) were argued on the footing that the owner was the vendor. The value in Section 25 (1) was not the value to the owner as a purchaser but the value to him as a vendor. As to Question (2), the Referee had to value the surface only, with the normal rights of property, in the terms of Section 25, and must give to surface and to minerals the same scope. It was necessary to restrict the vendor to the person who could sell, and Lord Eldon could not sell the minerals as they were in lease. There was no reason to assume that the surrounding owners would join in the sale.

Mr. Cartmell, in reply, said that as regarded agricultural value, "land" in the Act was not a legal term, but a physical subject, and one had to ascertain the value of the physical subject for agricultural purposes. On Question (1) he adopted the Commissioners' argument in preference to that of the trustees on the inclusion of Lord Eldon's land and the exclusion of the rest, but one must not go into Lord Eldon's private affairs. The value under Section 25 (1) was not the value to the *de facto* owner (*Buchanan v. The Commissioners of Inland Revenue (supra)*), but was a hypothetical value. The Commissioners' argument really was that the land had a special value because Lord Eldon also owned the next land. On Question (2) the Commissioners' general principle was convenient, and, if his argument failed, he supported it.

The Referee's decision, dated September 16, 1915, was as follows:—

The decision on appeal, in respect of which the annexed notices have been given, is as follows:—

1. The item No. 1 was insufficient, and ought to be £14,040 instead of

£13,028, in which amount I include the sum of £1,500, being the value of the potentiality of a portion of the hereditament for building purposes. The value of this potentiality is hereinafter referred to as the "building value."

2. The item No. 2 was insufficient and ought to be £4,956 instead of £2,485.

3. The item No. 3 was excessive and ought to be £2,025 instead of £2,056.

4. The item No. 5 was excessive and ought to be £1,006 instead of £1,026.

5. The item No. 8 was insufficient and ought to be £100 instead of £82.

6. The item No. 12 was insufficient and ought to be £4,956 instead of £2,485.

7. The item No. 16 ought to be £229.

8. The full site value ought to be £9,084 instead of £10,543, the total value ought to be £10,909 instead of £9,846, the assessable site value ought to be £5,724 instead of £7,379, and the value of the agricultural land for agricultural purposes should be £9,229.

9. The costs of the appeal must be borne by the Commissioners of Inland Revenue. In coming to the above decision I have acted on the following principles :—

(A) In my judgment it is not impossible to value the hereditament the subject of this appeal which is surface land without at the same time valuing such of the subjacent minerals as are being treated as or as part of a separate parcel of land.

(B) I have proceeded on footing (i.) that even if (as has been contended by the respondents to be the fact) the person or persons who on April 30, 1909, had power to sell the surface land, being the hereditament, the subject of this appeal had also power at the same date to sell other surface land in the immediate vicinity, I am not for the purpose of ascertaining the values on the statutory basis of the surface land being the hereditament the subject of this appeal to treat the hypothetical purchaser thereof as on the aforesaid date as having an opportunity of buying, or contracting to buy, any such other surface land except such, if any, as was in fact in the market on that date ; (ii.) that I am not for the purpose of ascertaining the values on the statutory basis of the surface land, being the hereditament the subject of this appeal, to treat any other surface land as being in the market on April 30, 1909, except such, if any, as was in fact in the market on that date. It was not suggested before me that there was on the said date any other surface land in fact in the market which it was material for me to consider.

(C) I have assumed that the owner of the surface of the hereditament, the subject of this appeal, is entitled to support from the subjacent and adjacent minerals.

- (D) I have proceeded on the footing (i.) that even if (as has been contended by the respondents to be the fact) the person or persons who on April 30, 1909, had power to sell the surface land, being the hereditament the subject of this appeal, had also power at the same date to sell minerals underlying such surface land or situate in the immediate vicinity. I am not, for the purpose of ascertaining the values on the statutory basis of the surface land, being the hereditament the subject of this appeal, to treat the hypothetical purchaser thereof as on the aforesaid date as having an opportunity of buying, or contracting to buy, any such minerals except such, if any, as were in fact in the market on that date ; (ii.) that I am not, for the purpose of ascertaining the values on the statutory basis of the surface land, being the hereditament the subject of this appeal, to treat any minerals as being in the market on April 30, 1909, except such, if any, as were in fact in the market on that date. It was not suggested before me that there were on the said date any minerals in fact in the market which it was material for me to consider.
- (E) I have, as agreed between the parties before me, for the purpose of this case, regarded minerals as meaning all substances in the earth apart from the surface soil, and treated them for all practical purposes as consisting of coal and fireclay, sand, limestone, and other substance, if any, capable of being turned to commercial use.
- (F) I have assumed that the deduction for tithe should in the case of such portions of the hereditament the subject of this appeal as have a building value be a sum equivalent to 25 years' purchase of the commuted value of the title on such portions, and should in the case of agricultural land not having a building value be a sum equivalent to 28 years' purchase (being the number of years' purchase at which the rental value of the land has been capitalised in arriving at the total value) of the sum which according to the average value in force for the year 1909 would have been payable in respect of such land.
- (G) I have assumed that the deduction in respect of expenditure in redemption of land tax (item 16) should be ascertained by adopting the actual amount which was paid for redemption, and in so assuming I have proceeded upon the footing that such deduction is a permanent and stable deduction which will be made on each occasion on which the site value of the hereditament, the subject of this appeal, is ascertained.
- (H) I have included in my valuation the whole of the soil of any roads within the hereditament, the subject of this appeal, and the soil of any roads abutting on the said hereditament up to the middle of each such abutting road, the area of such roads or portions of roads 5,277 acres, and the total acreage of the said hereditament being 374 acres 0 roods 32 perches.

- (1) In ascertaining the value of the hereditament, the subject of this appeal, for agricultural purposes I have deducted from the gross value of the said hereditament the capital value of the tithe and of the fee farm rent the depreciation due to footpaths or rights of way the building value of such portion of the said hereditament as has a building value, and the value of the land for sporting purposes as distinguished from agricultural purposes.

I attach to this, my award, a plan marked A, on which the hereditament, the subject of this appeal, is shown by being coloured round with red.

Each of the other coloured hereditaments on the plan constitutes a parcel of surface land in a separate occupation forming part of the estate of the owner of the hereditament, the subject of this appeal. The surface of the uncoloured land abutting upon the land coloured round with red on the plan belongs to one or more owner or owners.

The minerals within the lands coloured on the plan, other than the Chilton Grange Farm coloured round with brown, are the property of the owner of the hereditament, the subject of this appeal.

The coal and fireclay (but no other minerals) with the hereditament, the subject of this appeal, as well as within other adjoining land belonging to the owner of the said hereditament were on April 30, 1909, comprised in a mining lease.

For the Earl of Eldon : J. Austen Cartmell.

For Viscount Boyne and Others : E. M. Konstam.

For the Commissioners : F. W. W. Kingdon, Assistant Solicitor of Inland Revenue.

Before DANIEL WATNEY, ESQ., Referee, 20th January, 1915.

J. E. VOULES AND OTHERS *v.* THE COMMISSIONERS OF INLAND REVENUE.

REVERSION DUTY—LEASE AND REVERSIONARY LEASE—PURCHASE OF REVERSION BY LESSEE—PROPORTION OF FULL DUTY PAYABLE—FINANCE (1909-10) ACT, 1910, s. 13 (1)—REVENUE ACT, 1911, s. 3 (2).

Mr. Allen said that the appeal was against an assessment to reversion duty, purely on a point of law. There was no dispute as to the facts. The property in question was let on lease for 28 years from September 29, 1890, at £82 per annum; that lease would ordinarily terminate in 1918. In 1902 a reversionary lease was granted to the lessees for 35 years, which would terminate in 1953. In 1913 the lease determined because the lessees bought the reversion for £1,850. The question at issue was concerned with the Finance (1909-10) Act, 1910, Section 13 (1), and the Revenue

Act, 1911, Section 3 (2), and was whether the duty payable by the appellants should be calculated on the basis of the lease ordinarily terminating in 1918 or in 1953. The following figures were agreed: Total value at grant in 1890, £1,845; at determination, £4,150; difference, £2,305; full duty, £230. On the Commissioners' contention the duty payable by the appellants would be £189 12s. 11d., on the appellants' contention it would be £48. If the appellants' contention were wrong, it might be necessary to press for amending legislation, as such a case involved great hardship. The appellants only received £1,850 for their interest, and yet the Commissioners claimed to tax them on the basis of a total value of £4,150. Virtually the grant of the reversionary lease before the first lease ran out was an undertaking to renew the lease, and, although there was in the first lease no express obligation to renew, the real effect of the two leases was that during the currency of the first lease an obligation must be read into it. Reading the Revenue Act, 1911, Section 3 (2), with the help of the Interpretation Act, 1889, Section 1 (1) (b), which said that "words in the singular shall include the plural," the appellants were brought within the terms of Section 3 (2) in respect of both leases. Both the leases were in the hands of the same persons, and the freeholders could not obtain full possession until they ended, which would be in 1953. The lessor was taxed on the benefit accruing to him, but no benefit could accrue to him till 1953. Both these leases were granted *bona fide* before the passing of the Act.

Mr. Shaw said that the whole point turned on the meaning to attach to Section 3 (2), and the question was as to the amount of duty payable on the determination of the lease granted in 1895. Until the first lease determined the lessees had no further interest in the land, they had only an *interesse termini*. The reversionary lease could not determine because it never came into operation. What was the residue of "the term for which the lease was granted"? "The lease" was the lease which had determined, *i.e.*, the lease of 1890. In the first lease there was no obligation to renew, such as would extend its period within Section 41. In fact, a payment of £325 was exacted in 1902 for the grant of the reversionary lease.

Mr. Allen, in reply, said that the lessor could put it out of his power to regain possession in two ways, either by granting a renewable lease or by granting a reversionary lease. Immediately after execution the reversionary lease could have been assigned. The lessors did not get the full total value, and so should not be taxed on the full total value.

Awarded: That the assessment of £189 12s. 11d., as given in the notice from the Commissioners of June 27, 1914, is correct, having regard to the provisions of the Finance (1909-10) Act, 1910, and of the Revenue Act, 1911.

For the appellants: W. Allen, instructed by Ellis Peirs & Co.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before H. W. BRUTON, ESQ., Referee, 3rd Februzry, 1915.

W. H. C. MATTHEWS *v.* THE COMMISSIONERS OF INLAND REVENUE.

INCREMENT VALUE DUTY—SALE OF LAND—FINANCE (1909-10)
ACT, 1910, ss. 1, 2.

Mr. Matthews said that some twenty years ago he bought 4 acres of land, including the plot in question, for about £100 per acre. The land was then in a bad state of cultivation, and for a number of years he had done his best to improve it; he had built eighteen cottages on part of it, had planted trees, fenced and railed it. In 1911 Mr. Cross approached him with a view to purchasing a small plot on which to build a house. The plot was 2,338 square yards, and he sold it for £220. No house had been built, and it was now an allotment, which was detrimental to the rest of the property. He wished the Referee to inspect the plot.

Cross-examined: There was a separate provisional valuation of this piece of land. He believed that he agreed with the valuer that the value of the front plot should be £200 per acre. If it were sold now it would not fetch that amount. Mr. Cross was not under the influence of drink when he bought the plot. He (appellant) had an interview with Mr. Wooldridge on December 18, 1912; he did not say to Wooldridge that Cross was under the influence of drink at the time of the sale; he did not know whether he agreed with Wooldridge that the price was a fancy price. He did not know whether Cross soon afterwards tried unsuccessfully to sell the plot for £105. There were some trees, but no buildings, on the land he sold to Cross.

Mr. Shaw said that the original site value of the land had become settled at £100, and could not be questioned. The appellant agreed that the provisional valuation was fair. Whether the price paid was a fancy one or not was immaterial. On the occasion of the purchase for £220, the Commissioners had to make a calculation to see if duty was exigible. The site value on the occasion was, by Section 2 (2), £220, and the increment value was the excess over the original site value of £100—viz., £120. From that was deducted 10 per cent. of the original site value, leaving £110, on which the duty was £22. There was no dispute that £220 was paid by Cross. There was no question as to the actual value of the land, and no reason why the Referee should view it. He had asked the appellant certain questions as to the circumstances of the sale, as, in default of some explanation, the Referee might think that the figures of the provisional valuation were wrong.

A. M. Wooldridge, section valuer for the Daintree section of Northampton, said that he prepared the provisional valuation, which was served on December 20, 1912. No objection was made by the appellant. On December 18, 1912, he had an interview with the appellant, and made a note at the time of what took place. He handed in the note to the Referee.

Mr. Matthews said that it was true that the sale showed a profit, but it was after paying mortgage interest and working on the land for twenty years, and the remainder of the land was left on his hands. He had never received the purchase money; the mortgagees would only allow him to sell on condition that he handed the money to them in diminution of the mortgage.

Awarded: That the assessment of increment value duty was correctly made.

The appellant in person.

For the respondents: J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before THOMAS BINNIE, ESQ., *Referee*, 5th May, 1915.

UNITED FREE CHURCH OF SCOTLAND *v.* COMMISSIONERS OF INLAND REVENUE.

SUBSTITUTED SITE VALUE—TRANSFER ON SALE MORE THAN TWENTY YEARS BEFORE APRIL 30, 1909—UNION OF TWO DISSENTING CHURCHES—WHETHER UNITED CHURCH THE SAME "PERSON" AS ONE OF THE UNITING CHURCHES—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 2 (3)—REVENUE ACT, 1911 (1 GEO. V., c. 2), s. 2.

In 1900 the United Presbyterian Church entered into union with the Free Church of Scotland under the name of the United Free Church of Scotland. At the last meeting of the synod of the United Presbyterian Church resolutions were passed transferring the property of that church to trustees for the United Church. *Held* (on the authority of *Mailler's Trustees v. Allan* (1904), 7 F., 326) that the United Free Church was the same person as the United Presbyterian Church, and was entitled to claim a substituted site value in respect of a transfer on sale to the United Presbyterian Church more than twenty years before April 30, 1909.

This was an appeal by the General Trustees of the United Free Church of Scotland and the surviving members of the Finance Committee of the United Presbyterian Church against the refusal of the Commissioners of Inland Revenue to allow a substituted site value for a property forming 2/2B, Carlton Place and 24/2, Nicholson Street, Glasgow, estimated by reference to the consideration given on a transfer on sale in 1884 to the members for the time being of the finance committee appointed by the synod of the United Presbyterian Church and their successors in office to be from time to time appointed by the said synod as trustees for behoof of the said synod.

In 1900 the United Presbyterian Church entered into union with the Free Church of Scotland under the name of "The United Free Church of Scotland." At the last meeting of the synod (the supreme court) of the United Presbyterian Church resolutions were passed to the effect that, on the union being accomplished, the whole property belonging to the synod or subject to its control should thenceforth belong to or be subject to the control of the supreme court of the United Church, and that the then members of the finance committee appointed by the synod, and the survivors of them, were to remain in office until all property of the church then vested in them should be validly and effectually transferred to and vested in trustees for the United Church. It was further resolved that certain persons named should be general trustees for holding the property of the United Presbyterian Church from and after October 31, 1900, and it was declared that they and their successors in office to be from time to time appointed by the general assembly (the supreme court) of the United Free Church of Scotland should be the successors in office of the finance committee of the United Presbyterian Church. These resolutions were all confirmed at the first general assembly of the United Church after the union.

Since the union the execution of conveyances to the United Church of the various properties held by the United Presbyterian Church had been gradually overtaken, but the property forming the subject of this appeal had not yet been formally conveyed to the United Church. This special point, however, was not pressed by the appellants.

In *Free Church of Scotland v. Lord Overtoun* (7 F. (H.L.), 1; [1904], A. C., 515) it was held that as the United Free Church had departed from one of the fundamental and distinctive doctrines of the Free Church, the Free Church had lost its identity by entering into union with the United Presbyterian Church. The question for determination by the Referee was whether the United Presbyterian Church had likewise lost its identity by entering into union with the Free Church.

The appellants maintained that in the application of Section 2 of the Revenue Act, 1911, to property held by trustees, the criterion was identity of beneficial interest and not identity of individual trustees. The case of *Free Church v. Lord Overtoun* referred only to the Free Church. The United Presbyterian Church was in a different position. Its identity with the United Church had already been judicially determined in the case of *Mailler's Trustees v. Allan* (1904) (7 F., 326), decided by the Scottish Courts subsequent to the *Free Church* case. A legacy to a society was good notwithstanding its amalgamation with a kindred society and changes both of name and organisation. ("McLaren on Wills and Succession," vol i., p. 383; *Pringle v. Marquess of Tweedale* [1823], 2 S., 588; *Somerville and others* [1830], 8 S., 370.)

For the Commissioners it was admitted for the purposes of Section 2 of the Revenue Act, 1911, that where property was held by trustees it was the beneficial interest which determined the question of identity; but a learned argument was submitted to the effect that the declarations and formulæ of the United Free Church, when compared with those of the United Presbyterian Church, clearly showed that the former body differed

from the latter not only in name but in its distinctive principles, that a large body of people who had never accepted the distinctive tenets of the United Presbyterian Church were admitted to the management and enjoyment of its property, that recognition was given to Declaratory Acts of the Free Church which formed no part of the constitution of the United Presbyterian Church, and that while the United Presbyterian Church had throughout the whole period of its existence professed "the voluntary principle," it was open to any member of the United Free Church to maintain either the principle of an established church or voluntarism as he chose. The United Free Church was therefore a new body, a new legal entity, a new "person." The fact that, unlike the Free Church, the United Presbyterian Church went into the union unanimously did not affect the question. From the judgments of the Lord Chancellor, Lord Davey, and Lord Robertson in the *Free Church* case it was evident that they considered the United Free Church to be a distinct and separate body from either of the churches which entered into the union. *Mailler's Trustees v. Allan* had no bearing on the question in dispute, because the property dealt with was not church property; but the estate of a testator who had directed his trustees to administer the estate as a bursary fund for students of the United Presbyterian Church. The ratio of the decision was that as the whole members of the United Presbyterian Church were now included in the United Free Church, it was not at variance with the testator's intention that the fund should be applied in assisting students going forward for the ministry of the United Free Church. Some of the *dicta* of the judges in *Mailler's Trustees v. Allan* were in direct conflict with certain passages in the judgments of the Lords in the *Free Church* case.

The Referee's award was as follows :—

Having heard parties' agents, and having considered the arguments adduced and the productions lodged, I decide :—

First : That the appellants, the General Trustees of the United Free Church of Scotland, are in law the same "person" as the members of the finance committee of the synod of the United Presbyterian Church and their successors in office as trustees for behoof of the said synod, as such United Presbyterian Church existed prior to 1900 ;

Second : That therefore the transfer on sale in 1884 to the then members of the said finance committee and their successors in office as trustees for the said synod of the land Nos. 2/2B, Carlton Place, and 24/2, Nicholson Street (Identification Nos. Glasgow 19/530 and 19/608) was a transfer to the person who was the owner of the land at the date when the application for a substituted site value was made, being February 16, 1914, within the meaning of Section 2 (3) of the Finance (1909-10) Act, 1910, and Section 2 of the Revenue Act, 1911 ; and

Third : That accordingly it is competent to the appellants to apply to the Commissioners of Inland Revenue for a substituted site value estimated by reference to the consideration given on the said transfer.

I find the appellants entitled to their expenses in this appeal, allow them to lodge an account thereof with the auditor of the Court of Session, and remit the same to the said auditor for taxation and report.

Note.—As I am informed that this is more or less a test case I may state briefly the grounds upon which I base my decision.

The appeal involves no question of value, but only questions of law, and as a layman I have felt great diffidence in deciding such questions. The case has entailed a very exceptional amount of reference to the reports of decided cases, to resolutions of the synod of the United Presbyterian Church and acts of the general assemblies of the Free Church and the United Free Church, and to the constitutions, standards, formulæ, &c., of all three Churches; but my task has been greatly lightened by the very clear and able way in which the case was put before me by Mr. McLean for the appellants and Mr. Watson for the respondents.

The main point at issue in the appeal is this: The appellants affirm, and the respondents deny, that the United Free Church is in law identical with the United Presbyterian Church, and that the trustees of the United Free Church are therefore entitled to claim the relief afforded by Section 2 (3) of the principal Act as amended by Section 2 of the Revenue Act, 1911. An alternative contention was put forward by Mr. McLean, but I deal with it later.

In arguing the case for the respondents, Mr. Watson laid great stress on *Free Church of Scotland v. Lord Overtoun* (1904), 7 F. (H.L.), 1, the well-known *Free Church* case. I have therefore read with great care the judgments given by the noble and learned Lords in deciding that case, and these certainly do appear to support the arguments advanced for the Crown in this appeal. Had the *Free Church* case been the latest decision, I think that the judgments pronounced in it, when read in conjunction with the differences between the constitution, standards, and formulæ of the United Free Church, and those of the United Presbyterian Church, would probably have led me to decide this appeal in favour of the respondents.

Mr. McLean, however, referred me to the case in the Court of Session of *Mailler's Trustees v. Allan* (1904), 7 F., 326, a case not only decided after the *Free Church* case, but of which consideration was purposely delayed by the Court of Session until the House of Lords' decision in that case was made known. The judgments pronounced by the learned Judges of the Second Division in *Mailler's* case, and more especially by Lord Young and Lord Trayner, seem to me to settle the point at issue in the present appeal. The Lord Justice-Clerk (Kingsburgh), at p. 332, says: "But the United Presbyterians have not by taking others into union with 'them and varying their name given up any of their principles. . . ." Lord Young, at p. 334, says: "I am therefore of opinion that the position 'of the United Presbyterian Church now' (he was speaking in 1904) 'does not in any material respect differ from its position at and prior to 'the testator's death in 1869. It is the same Church in all respects, 'though increased in size as it probably is. . . ." Lord Trayner, at page 335, is equally emphatic: "In the case we are dealing with, the

"trust estate never was the property of the Free Church, and never was the property of the United Presbyterian Church. Even if it had been the property of the United Presbyterian Church, I should still have been of the opinion of which I am now, that the judgment of the House of Lords did not affect that, because there has been no change whatever on the United Presbyterian Church except the addition to it of a great many people who have left the Free Church and joined it." In view of these clear and unambiguous *dicta*, which of course are binding on me, I cannot but decide this appeal in favour of the appellants, with expenses.

Mr. McLean put forward, as an alternative contention for the appellants, that as the title of the Carlton Place and Nicholson Street subjects is admittedly still vested in the surviving members of the finance committee of the United Presbyterian Church under the disposition of 1884 (though now holding as trustees for the United Free Church), these surviving members of the finance committee are entitled under Section 2 of the Revenue Act, 1911, to claim a substituted site value based on the consideration given in 1884. I doubt the soundness of this contention, as the point at issue in this appeal seems to me to be one of identity of *trust* rather than identity of *trustees*; but fortunately I do not need to decide this point, as I have already decided the appeal in Mr. McLean's favour on other grounds.

At the debate I offered to put my award in the form of a stated case if either of the parties so desired, but Mr. McLean and Mr. Watson both said they thought this unnecessary. It is only when stating a case that a referee is allowed to employ a solicitor to aid him, so that in preparing my decision on this appeal, which deals with nothing but points of law, I have had to do the best I could without legal assistance.

For the appellants : Robson & McLean, W.S., Edinburgh.

For the Commissioners : H. Watson, of the Solicitor's Department, Inland Revenue.

Before J. D. WALLIS, ESQ., Referee, 18th May, 1915.

CATTERALL AND SWARBRICK'S BREWERY, LIMITED, v. THE
COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—LICENSED PREMISES—APPEAL—APPLI-
CATIONS FOR PARTICULARS OF TRADE—FINANCE (1909-10) ACT,
1910, s. 26 (2)—LAND VALUES (REFERENCE) RULES, 1910,
B. 7 (2).

This was an application by the Commissioners to the Referee that the appellants should be ordered, pending the hearing of certain appeals brought by them against the provisional valuations of ten licensed houses

belonging to them, to furnish particulars of the trade done at the respective houses. The appellants opposed the application. The Referee decided that certain particulars should be given. The facts appear sufficiently from the following :—

Awarded : These appeals are appeals against total and site values on provisional valuations of ten licensed houses in Blackpool, belonging to the appellants, and occupied by tied tenants or managers. The Commissioners made an application under Rule 7 (2) of the Land Values (Reference) Rules, 1910, for an order or direction that the appellants shall furnish particulars of the trade for the years 1909 and 1910 at each of the licensed houses referred to in the notices of appeal, as follows : Number of barrels of beer supplied (less waste and returns); total net cash paid for same; dozens of bottled beer and stout (pints and half-pints separately); number of gallons of wines and spirits (bulk and bottled). The appellants contended that the particulars applied for are not relevant or necessary, and that such particulars cannot properly be required for the purpose of the valuation of the land, under Section 26 (2) of the Finance (1909-10) Act, 1910, or under Rule 7 (2) of the Land Values (Reference) Rules, 1910.

The decision on the application is as follows :—

- (1) That particulars as to the quantity and quality of the trade are relevant, and may properly be required by the Referee for the purpose of the determination of the appeals;
- (2) That particulars of net cash prices at which beer is invoiced to the managers, or sold to the tied tenants by the appellants, cannot properly be required;
- (3) That the particulars asked for by the Commissioners (except as to net cash prices) be furnished by the appellants in respect of each of the licensed houses referred to in the notices of appeal;
- (4) The costs of this application to be costs in the appeals.

For the appellants : E. Acton, instructed by W. J. Reid.

For the respondents : F. W. W. Kingdon, Assistant Solicitor of Inland Revenue.

Before HOWARD MARTIN, ESQ., *Referee*, 18th May, 1915.

P. FERGUSON v. THE COMMISSIONERS OF INLAND REVENUE.

UNDEVELOPED LAND DUTY—LAND DEVELOPED BY ERECTION OF BRICKWORKS—VALUE FOR AGRICULTURAL PURPOSES—FINANCE (1909-10) ACT, 1910, ss. 16 (2), 17 (2).

Mr. Allen said that the appeal was against assessments to undeveloped land duty for the four years 1910-14 on three hereditaments at Enfield

adjoining a large brickfield. The areas of the hereditaments were: No. 6,360, 23 acres 2 roods 10 poles; No. 12,801, 16 acres 1 rood 4 poles; No. 12,802, 3 acres 2 roods 36 poles, and they all adjoined No. 6,811, on which the brickworks were erected. The figures of the provisional valuations were as follows: No. 6,811, total value (agreed) £19,835, full site and assessable site values (agreed) £9,835. He called attention to these figures, because, in face of them, it could hardly be argued that the works were valueless or derelict. No. 6,360, all values except agricultural £8,250, agricultural value £2,375; No. 12,801, all values except agricultural £4,475, agricultural value £1,625; No. 12,802, all values except agricultural £1,120, agricultural value £375.

His first point was that the land was developed within the meaning of Section 16 (2). There was a double exemption in the section; land might be developed by the erection of buildings, or it might be developed by being used for a business, trade, or industry. Each case must turn on the particular facts, and this was more a question of fact than of law. This land was the minimum area which it would pay to buy in order to recover the expenditure of £36,000, which had been made in erecting the brickworks, and the whole area was reasonably required for the purpose of the brickworks. The whole must be regarded as one commercial proposition. Temporary letting did not bring the land within the category of undeveloped land. Its substantial user was its user as a reserve of brick earth for the works.

His second point was that the agricultural value of the hereditaments was too low. As to No. 6,360, the agricultural value was put at £2,375, *i.e.*, £100 per acre. The Commissioners seemed to have taken 20 years' purchase of the actual rent received as the value. The tenant paid £5 an acre and all rates and taxes, and 25 years' purchase ought to be taken. In addition to the value of the land, there was a large number of fruit trees and market garden produce. A careful valuation had been made of these items for each year, and came to more than £100 an acre. This would make the agricultural value £2,945, plus £2,375, equals £5,320; and the assessable site value being £8,250, the taxable value left would be £2,930. A similar calculation as to No. 12,802 would give agricultural value £840, taxable value £280. With regard to No. 12,801, he claimed £12 an acre for tenant-right; this plot was not market garden land. This would give agricultural value £1,825, taxable value £2,650. He could not raise the question of total or site value on an appeal against an assessment, but he could raise the question of agricultural value.

Evidence as to the history of, and the expenditure on, the brickworks was given by P. Ferguson, C. W. Galliers, and F. W. Hodson, and as to the agricultural value of the land by S. Lowe (the tenant of two of the plots) and J. B. Slade.

Mr. Shaw said that the subject of the appeal was agricultural, and had never been used for brickworks. Up to the time of service of an amended notice of appeal the sole question had been whether Section 16 (2) applied, and so far from the question of agricultural value being raised, that value was not objected to by Ferguson. Either the appellant said that the land was developed by the erection of the works, or that it was being used. On

the second point he thought that *Brake v. The Commissioners of Inland Revenue* was conclusive. This land was not used for the purpose of the brickfield, even assuming that brick-making had been in full force during the years of the assessments. It was land held in reserve, and its use was agricultural. The answer to the other point was that the erection of a building on another piece of land could not develop land used for an entirely different purpose. It was by no means certain that the land would ever be used for brick-making; it might be used for building purposes. He referred to *Leeds Fireclay Company v. The Commissioners of Inland Revenue*, and *Great Southern Cemetery, &c., Company v. The Commissioners of Inland Revenue*. If the appellant was right, the person who expended money on buildings might be developing land which did not belong to him, but which he might acquire later. In this case the tenants could not be disturbed, the appellant had not the power to work the minerals. He was content to leave the question of the agricultural value to the Referee; he did not dispute the appellant's contention as to the law.

Awarded (Plot 6,360): This appeal is against the assessment to undeveloped land duty of a piece of land, No. 6,360, at present used as nursery ground.

Fourteen objections were stated as the grounds of the appeal, of which the following are the most important:—

- (A) That the land is developed by existing buildings within the meaning of Section 16 (2).
- (B) That it is otherwise used *bona fide* for a trade, business, or industry other than agriculture within the meaning of Section 16 (2).
- (C) That if the land is rightly subject to assessment to undeveloped land duty, the amount of the assessment is excessive, because the deduction of the value of the land for agricultural purposes made under Section 17 (2) is insufficient.

The following facts were proved at the hearing of the appeal:—

The appellant was the receiver appointed by the mortgagees of one Hills, who purchased at different dates between the beginning of 1896 and the end of 1899 about 93 acres of land, including the subject of this appeal, for the purpose of establishing brickworks, and erected buildings for that purpose—which cost about £36,000—on a part of the land No. 6,811, about 49 acres in area, and let the remainder on agreements for short terms in three plots, viz., No. 12,801, about 16 acres 1 rood 4 poles in area, as arable land, and No. 12,802, about 3 acres 2 roods 34 poles in area, and No. 6,360, about 23 acres 2 roods 10 poles in area, as nursery gardens.

The manufacture of bricks was carried on in the buildings and on the land No. 6,811 until 1911, when Hills failed, and since then money has been spent in gradually improving and renovating the plant and buildings, and negotiations which were now in abeyance were carried on for the sale or letting of the works.

The brick earth in about 5 acres of No. 6,811 is still unworked, and would be sufficient for the purpose of carrying on the works for five years, but, in order to obtain a proper return for the capital expended on the buildings, it would be necessary to continue working the brickfield for thirty years, and therefore the brick earth contained in Nos. 12,801, 12,802, and 6,360 is necessary as a reserve of brick earth for the successful working of the undertaking.

As regards the deduction made under Section 17 (2) in respect of the value of the land for agricultural purposes, it was submitted that the district valuer's assessment did not include in that value the value of the tenant's interest or crops growing upon the land. The decision on the appeal is as follows :—

That the land No. 6,360 is not developed by the erection of buildings within the meaning of the Act ;

That it is not otherwise used *bona fide* for any business, trade, or industry other than agriculture, within the meaning of the Act ; and

That it is therefore subject to assessment to undeveloped land duty ; but that the assessment is excessive, and ought to be reduced to £2,930.

The awards in respect of plots 12,801 and 12,802 were in similar terms, the assessments being reduced, in the former to £2,650, and in the latter to £280.

For the appellant : William Allen, instructed by Hammond & Richards.

For the respondents : J. H. Shaw, of the Solicitor's Department, Inland Revenue.

Before JOHN WATHERSTON, ESQ., *Referee*, 5th June, 1915.

MRS. SCOTLAND'S TRUSTEES *v.* THE COMMISSIONERS OF INLAND REVENUE.

INCREMENT VALUE DUTY—TEN PER CENT. DEDUCTION—ORIGINAL SITE VALUE—WHETHER ASSESSABLE SITE VALUE OR FULL SITE VALUE—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 3 (5).

The original site value of land in Section 3 (5) of the Finance (1909-10) Act, 1910, is the original assessable site value and not the original full site value.

By disposition dated March 20, 1914, the trustees of Mrs. Jane Taylor or Scotland sold and conveyed one-half *pro indiviso* of certain subjects in Lothian Street, Edinburgh, to H.M. Office of Works at a price of £425.

The original assessable site value of the whole property had become fixed at *minus* £124, while the "occasion" site value was determined at £168, revealing an increment value of £292. In arriving at the increment value duty payable on the occasion, the Commissioners of Inland Revenue proceeded as follows :—

| | £ |
|---|------|
| Increment value | £292 |
| Deduct 10 per cent of original site value in terms of Section 3 (5) of Finance (1909-10) Act, 1910 ... | Nil |
| Increment value as reduced for purpose of collection of duty | 292 |
| One-fifth whereof (£1 for every complete £5) | 58 |
| Proportion payable by transferors in respect of one-half <i>pro indiviso</i> of property | 29 |

An assessment to the above sum of £29 of increment value duty having been made upon the trustees, they appealed on the ground that the Commissioners, in arriving at the increment value on which duty fell to be calculated, had failed to make an allowance of an amount equal to 10 per cent. of the original site value in terms of Section 3 (5) of the Finance (1909-10) Act, 1910. They maintained that they were entitled under that subsection to an allowance of 10 per cent. of the original *full* site value, which had been determined at £232. Their claim was, therefore, to deduct £23 from the increment value of £292.

The Referee heard parties on March 11, 1915.

It was contended for the appellants that the expression "original site value," in Section 3 (5) of the Finance (1909-10) Act, 1910, meant original *full* site value. The original assessable site value being a *minus* quantity, the deduction of 10 per cent. of the original assessable site value would increase and not diminish the increment value, and, therefore, the expression "original site value," in Section 3 (5), could not mean original assessable site value. The only other site value was full site value, which was always a positive quantity. The appellants founded on certain observations of Lord Moulton, in *Herbert's Trustees v. Inland Revenue*, 1913, S. C. (H.L.), 34, at p. 56; [1913] A. C., 326, at p. 362, as authority for their contention.

It was maintained for the Commissioners that "original site value," in Section 3 (5), meant original *assessable* site value, though, that figure being a *minus* quantity in the present case, they were prepared to state the deduction at *nil*. In any event what the appellants claimed was not merely that the Commissioners were wrong in their interpretation of Section 3 (5), but that the Referee should decide affirmatively that the expression "original site value" meant "original *full* site value." This was not warranted by the terms of the statute. "Full site value" was the subject of express definition in Section 25 (2) of the Act, and if the Legislature had meant "original site value" in Section 3 (5) to mean "original full site value," it would have said so. Section 3 (5) provided not only for deduction of the 10 per cent. on the first "occasion," but also-

on subsequent occasions. In the case of subsequent occasions the deduction to be allowed was of "an amount equal to 10 per cent. of the site value on the last preceding occasion." Such a site value was not full site value, and might well be a minus quantity. The appellants' contention, therefore, would result in a different rule being applied to the first occasion from that applied to subsequent occasions. The expression "original site value" was used in Sections 2 (1) and 27 (1) of the statute. In both these sections it meant "original assessable site value" as defined in Section 25 (4). No valid reason had been advanced for placing a different interpretation on the same expression in Section 3 (5). Lord Moulton's observations in *Herbert's Trustees* were merely *obiter*, and his view was not accepted by the other judges in the appeal.

The Referee decided that the 10 per cent. deduction was 10 per cent. of the original assessable site value, and not of the original full site value as claimed by the appellants. The Commissioners were found entitled to their expenses.

For the appellants : Bruce & Kerr, W.S., Edinburgh.

For the Commissioners : H. Watson, of the Solicitor's Department, Inland Revenue.

Before J. M. CLARK, Esq., Referee, 26th October, 1915.

JOICEY v. THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION — SALE — INCREMENT VALUE DUTY — AGGREGATION OF TWO UNITS OF VALUATION FOR PURPOSE OF ASSESSING DUTY—FINANCE (1909-10) ACT, 1910, ss. 7, 29 (1).

Mr. Allen said that the appeal was against the assessment of increment value duty on two units, numbered 2,797 (2) and 3,506 (3). The assessment was served on September 9, 1914, and purported to show a net duty payable of £607. He should submit that the larger unit, 2,797, was agricultural land, and had no higher value than its agricultural value, and that its site value in 1909, and at the date of sale, was the same.

On December 4, 1911, the Commissioners served what purported to be a provisional valuation of 2,797, showing gross value £6,120, total value £6,005, full site value £4,680, assessable site value £4,565, agricultural value £3,118.

On September 17, 1912, an amended valuation was served, showing gross value £3,262, total and agricultural values £3,147, full site value £1,822, assessable site value £1,707. The other unit, 3,506, had a building value, and the valuation showed all values as £1,775.

On July 11, 1913, parts of these two units, now numbered 2,797 (2) and 3,506 (3), were sold to the South Moor Colliery Company for £6,750, and the valuation department assessed the site value on the occasion at £5,330. They also apportioned the original site values on the parts sold as follows :

2,797 (2), £731 ; 3,506 (3), £1,355 1s. 10d. ; and demanded duty on the difference between the site value on the occasion and the apportioned original site value plus the 10 per cent. allowance. His first point was that 2,797 and 3,506 being separate units of valuation, duty should have been separately calculated and assessed on each, instead of having been found as one lump sum. The Commissioners maintained that they had a right to assess the two units together under Section 29 (1). "Such pieces of land" in that section must refer either to the land which was subject to undeveloped land duty, which was mentioned in Section 28, or to the words in Section 26 "each piece of land which is under separate occupation, &c." If it were the latter, the Commissioners had power, if a unit in one occupation had been split up between the date of valuation and the date of sale, to aggregate the prices at the date of sale and compare them with the similar valuation in 1909, but they had no power to aggregate original units of valuation for the purpose of assessing duty. This was important in view of Section 7, as otherwise the Commissioners might aggregate building land with agricultural land. Secondly, he submitted that 2,797 was agricultural land and had no higher value. The case fell within *Lumsden v. The Commissioners of Inland Revenue*. Both units were sold for more than they were worth, the values at both dates were the same, and under Section 7 no duty was payable. If agricultural land was sold for something which was not value it was exempt from duty under that section.

His third point was that no provisional valuation had been made in accordance with the Act, and therefore there was no datum line from which to calculate increment value duty. The valuation was served before *Smyth v. The Commissioners of Inland Revenue* was decided, and presumably the Commissioners followed their ordinary practice in this case, and did not include the tenant's interest, or deduct the value of the grass. Unless the Commissioners had found the values set out in Section 25, they had not carried out their duties under Section 26, and their document was not a provisional valuation within the Act, and should not be deemed one simply because the owner did not object to it.

He admitted that £1,440 was a correct deduction for buildings, trees, &c., in the original valuation, but he did not admit that the deduction on the occasion was correct. If the grass was included, the deduction should be £1,545 instead of £1,420.

H. T. Pearson said that in his opinion plot 2,797 had no value higher than its agricultural value. He estimated the total deductions on the occasion at £1,545 15s. and the values at total value £2,582 2s. 4d. ; full site value, £1,176 7s. 4d. ; assessable site value, £1,036 7s. 4d.

Mr. Kingdon said that the land was purchased so as to detach the right of support, so that the colliery company might work the coal without fear of an injunction or claims for damage. The words "such pieces of land" in Section 29 (1) could not refer to Section 28, they referred to the pieces of land which the Commissioners had originally separately valued. He asked the Referee to find as a fact that the agricultural value of each part was less than the actual price and value of each part at the date of transfer, and he asked the Referee to find the separate values of

each part. Section 29 (1) must be given its literal signification, unless other provisions in the Act made the literal meaning impossible. The Commissioners, in arriving at the duty, were not bound down to the particular unit which was originally separately valued. The value of two units in one ownership might be greater than the sum of the values of each unit in separate ownerships. If the appellant were right, apportionment of the consideration would be also necessary in the case of property passing on death, but under Section 32 there was no power to apportion in such a case.

With regard to the second point, the agreed agricultural value of 2,797, 118 acres 2 roods 19 poles in all, was £3,147; 50 acres of that were sold, and on those 50 acres were the farm buildings; the question was, having regard to the agreed figure for the total, what ought to be allocated to the 68 acres not sold. Price was *prima facie* but not necessarily the market value; it was very strong evidence of market value. The value was obtained in this case under the conditions of Section 25, and it was ridiculous to suggest that a shrewd commercial firm gave an absurd price. The price was very largely in excess of the agreed agricultural value, which showed that the land in fact had a value for the purpose of severing the right of support, or failing that, it had a building value.

If the appellant was right in his third point, then a mistake in law had an effect under this Act which it had not under English law. The figures were accepted by the appellant, and he could not now go behind them.

The price paid was substantially the market value, and in considering Section 7 it was only necessary for the Crown to establish that the market value exceeded the agricultural value by even such a small sum as £1.

W. Townsend said that colliery companies often paid higher sums than the agricultural value for the surface over their minerals; double the agricultural value seemed to be the measure of value to a colliery.

This land might be valuable either for getting rid of the right of support or for building. He was sure that to the colliery the land was worth the amount paid.

Cross-examined: Before the case of *Smyth v. Commissioners* he did not deduct the value of the grass.

Mr. Allen, in reply, said that there was no evidence that the land was bought for the purpose of getting minerals; it was still being used as agricultural land, and there was no commercial value in the land other than its agricultural value. He asked the Referee to find—

- (1) That the Commissioners were not entitled to lump the two units together.
- (2) That they should have apportioned the purchase money.
- (3) That the document purporting to be a provisional valuation was not a provisional valuation.
- (4) That the land had no higher value than its agricultural value.
- (5) That the deductions allowed by the Commissioners were insufficient.

Awarded :—

- (1) That the hereditaments Nos. 2,797 (2) and 3,506 (3) are correctly calculated in one sum for the purpose of ascertaining the increment value duty.
- (2) That the total purchase money should not have been apportioned in respect of each hereditament before the increment value duty was calculated.
- (3) That the net amount of the increment value duty payable is correctly calculated at £607.
- (4) That the provisional valuations, dated September 14, 1912, for No. 2,797, and September 17, 1912, for No. 3,506, were duly made and served, and no objection was taken thereto, and that the apportionments for Nos. 2,797 (2) and 3,506 (3), respectively dated August 27, 1913, and May 2, 1913, were also duly made and served, and no objection was taken thereto, and that the original site value was found as provided by the Finance (1909-10) Act, 1910.
- (5) That the increment value duty is correctly calculated.
- (6) That hereditament No. 2,797 (2) had a higher value at the time of the sale thereof to the appellant than its market value for agricultural purposes only. The value for agricultural purposes is £2,160.
- (7) That it is not exempt from increment value duty under Section 7 of the said Act, and that the amount demanded, viz., £607, is correct.
- (8) That the deductions from gross value to arrive at full site value on hereditament No. 2,797 (2), amounting to £1,420, are correctly made on the occasion within the meaning of Section 25 (4) of the said Act.
- (9) That the values on the occasion of hereditament No. 2,797 (2) are as follows :—

| | £ | s. | d. |
|---|---------------|----------|----------|
| Gross value | 4,500 | 0 | 0 |
| Deductions from gross value to arrive at full site value | 1,420 | 0 | 0 |
| Full site value | <u>£3,080</u> | <u>0</u> | <u>0</u> |
| Assessable site value | 3,080 | 0 | 0 |
| Value of agricultural land for agricultural purposes | 2,160 | 0 | 0 |
| Amount of original assessable site value attributed to No. 2,797 (2) by apportionment of 2,797, dated August 27, 1913 ... | 731 | 0 | 0 |
| Increment value | 2,349 | 0 | 0 |

(10) That the values on the occasion of hereditament No. 3,506 (3) are as follows :—

| | £ | s. | d. |
|---|--------|----|----|
| Gross value | 2,250 | 0 | 0 |
| Deductions from gross value to arrive at full site value | Nil | | |
| Full site value... | £2,250 | 0 | 0 |
| Assessable site value | 2,250 | 0 | 0 |
| Value of agricultural land for agricultural purposes | 66 | 0 | 0 |
| Amount of original assessable site value attributed to No. 3,506 (3) by amended apportionment of 3,506, dated May 2, 1913 | 1,355 | 1 | 10 |
| Increment value | 894 | 18 | 2 |

For the appellant : William Allen, instructed by Davenport, Cunliffe & Blake, agents for Wilsons, Ormsby & Cadle, Durham.

For the respondents : F. W. W. Kingdon, Assistant Solicitor of Inland Revenue.

Before THOMAS BINNIE, ESQ., *Referee*, 4th November, 1915.

MURRAY'S M. C. TRUSTEES v. THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION—GROSS VALUE—DIFFERENCE BETWEEN GROSS VALUE AND FULL SITE VALUE—BUILDINGS—STRUCTURES APPURTENANT THERETO—ARTIFICIAL BANKS IN FOOTBALL FIELD—DEDUCTIONS FROM TOTAL VALUE TO ARRIVE AT ASSESSABLE SITE VALUE—WORKS EXECUTED—COST OF CLEARING SITE—FINANCE (1909-10) ACT, 1910, s. 25 (2) & (4) (b) & (e).

A piece of ground occupied as a football field contained sloping artificial banks for the accommodation of spectators. These banks were formed of ashes, with here and there wooden rests or breakers to prevent surging of the crowd. The ground also contained a grand stand and pavilion, both of a temporary character. *Held*, (1) that while the grand stand and pavilion were buildings, the banks were neither "buildings" nor "structures appurtenant to or used in connection with" buildings, and consequently were not things for divestment to arrive at full site value; (2) that the banks, not being works executed for the purpose of improving the land as building land or for the purpose of a business, trade, or industry, did not form a deduction from total value under Section 25 (4) (b); and (3) that the cost of divesting the land of the banks did not form a

deduction from total value under Section 25 (4) (e), as they were not things for divestment under Section 25 (2).

This was an appeal against the provisional valuation of a property in Glasgow Road, Port Glasgow, the larger portion of which consisted of a football field. A description of the land will be found in the Referee's award *infra*.

The figures in the provisional valuation were: Gross value, £4,100; full site value, £3,135; difference, £965; deduction for feu-duty and casualties, £830; total value, £3,270; assessable site value, £2,305. The ground of appeal was that the gross value, the difference between gross value and total value, and the deductions from total value to arrive at assessable site value were insufficient.

At the hearing before the Referee the appellants' solicitor expressed doubt as to the correctness of the area of the ground as stated in the provisional valuation, viz., 16,503 square yards. Subsequent inquiries showed that the area was slightly larger. On October 4, 1915, the parties lodged in process a joint minute in the following terms, viz. :—

" John Hood for the appellants and Alexander Blair, chief valuer
" for the Commissioners of Inland Revenue, concur in stating—

" (1) that the area of the ground forming the subject of the provisional valuation under appeal is 16,850 square yards or thereby, which figure is to be substituted for the figure of 16,503 square yards stated in the provisional valuation ;

" (2) that this alteration does not affect the basis of the appeal except to the extent to which the difference in stated area implies an error *calculi* in the valuation proportioned to that difference ; and

" (3) that subject to above correction in the area, both parties concur in asking the Referee to proceed with the appeal as in ordinary course."

The facts of the case and the contentions of the parties sufficiently appear from the Referee's award. The respondents referred to *Waite v. Commissioners of Inland Revenue* (*ante*, p. 276 and p. 335).

The Referee's award is as follows :—

I find that, as agreed by parties, the area of the land forming the subject of the appeal is 16,850 square yards, and not 16,503 square yards as stated in the provisional valuation appealed against, a copy of which is annexed. I decide that the values stated in the said provisional valuation are insufficient ; and I further decide—

| | | | | |
|---------------------------------------|-----|-----|-----|-------|
| | | | | £ |
| That the gross value is ... | ... | ... | ... | 6,110 |
| That the full site value is ... | ... | ... | ... | 4,210 |
| That the total value is ... | ... | ... | ... | 5,280 |
| That the assessable site value is ... | ... | ... | ... | 3,380 |

I have allowed the following deduction in arriving at full site value

from gross value, and also in arriving at assessable site value from total value :—

Difference between gross value and value of the fee
simple of the land divested of buildings, trees, &c. £1,900

I have allowed the following deductions, which are agreed by parties,
in arriving at total value from gross value :—

| | £ |
|---|-------|
| Feu-duty, ground annual, or tack duty | 650 |
| Burden or charge arising by operation of law or im- posed by Act of Parliament... .. | 180 |
| | <hr/> |
| | £830 |
| | <hr/> |

In arriving at assessable site value from total value I have not allowed any deduction under the heads of "Works executed," "Capital expenditure," or "Cost of clearing site."

I find the appellants entitled to their expenses in the appeal, including the fee payable to their witness Mr. Peter McBride, but modify such expenses at two-thirds; allow them to lodge an account thereof with the auditor of the Sheriff Court of Renfrewshire at Greenock, and remit the same to the said auditor for taxation and report.

Note.—The western and larger portion of the land forming the subject of this appeal was occupied at April 30, 1909 (the date of the initial valuation under the Act), as a football field, and still remains in much the same condition as it was then. On the east, west, and south sides of the playing field artificial banks, sloping upwards from the field, have been formed for the accommodation of spectators. These banks are formed of ashes, with here and there wooden rests or "breakers" to prevent surging of the spectators towards any one point, and to keep them from invading the field of play. On the south side of the field there are also a covered grand stand and a pavilion, both structures of a more or less temporary character.

Mr. Hood, for the appellants, contended that he was entitled to a deduction under Section 25 (2), or 25 (4) (*b*), or (*e*), in respect of the grand stand, the pavilion, and the banks of ashes; and he led evidence to show that it would cost a large sum—£1,350 or so—to clear the ground of the banks of ashes alone. Mr. Blair, for the Commissioners, agreed that the appellants were entitled to a deduction under Section 25 (2) in respect of the grand stand and the pavilion, and even of the low banks on which these are erected, and stated that such a deduction had been allowed in item No. 2 in the provisional valuation appealed against. But he contended that no deduction could be claimed under the sections cited by Mr. Hood in respect of the remainder of the banks.

I agree with Mr. Blair's contention.

I do not think any deduction in respect of the banks (except those under the grand stand and the pavilion for which parties agree a deduction must be allowed) is competent under Section 25 (2). The banks *per se* are not "buildings" in the ordinary sense of the word, and the presence

of the rests and breakers—mere wooden posts and rails—does not in my view make them “buildings.” They may be “structures,” although I greatly doubt it, but even then I do not think they are “appurtenant to or “used in connection with any such buildings.” Mr. Hood argued that all the banks are appurtenant to the grand stand, but I fail to see how open banks affording the cheapest-priced places at a football match can be appurtenant to a covered grand stand containing the highest-priced seats.

Nor do I see that any deduction is competent to the appellants under Section 25 (4) (b). The banks have not been formed “for the purpose of “improving the value of the land as building land”; on the contrary, they reduce its value as such. I do not doubt that the banks make the land more suitable for the purposes of a football club, but I question whether the temporary occupation of land as a football field constitutes a “business, trade, or industry” within the meaning of the Act.

Again, it does not seem to me that any deduction is competent under Section 25 (4) (e). This only deals with the cost of divesting the land of buildings and other things of which it is taken to be divested under Section 25 (2). If divestment of the banks is not competent under Section 25 (2)—and I do not think it is—the *cost* of divestment cannot be allowed under Section 25 (4) (e).

But while I am against Mr. Hood on his claim for a deduction *under the sections cited by him*, his clients really do get a deduction in respect of the banks in another way. Mr. Blair explained this very clearly at the hearing. He stated that in fixing the gross value of the land, from which all the other values flow, he had, as directed by Section 25 (1), taken into account the “then condition” of the land, that he had found it encumbered by banks which diminished its value, and he had therefore put its gross value at a lower figure than he would have done if the banks had been non-existent, and that if the appellants were to get a deduction in respect of the banks as claimed by Mr. Hood they would be getting the same thing twice over. I have followed Mr. Blair’s principle, as it appears to me to be sound, and although the values I fix are considerably higher than those in the provisional valuation, they are nevertheless lower than I should have fixed if I had found the land unhampered by the banks referred to.

I have gone thus fully into the matter as the point of the banks is an entirely novel one and seems to demand careful explanation.

As the appellants succeed on the merits of the appeal but fail on the points of law raised by them—which latter were responsible for most of the argument before me—I think justice will be done by modifying their expenses at two-thirds.

For the appellants : Lade & Hood, Port Glasgow.

For the Commissioners : Alexander Blair, Chief Valuer for Scotland.

Before JOHN M. AITKEN, ESQ., Referee, 29th December, 1915.

JAMES HENDERSON v. THE COMMISSIONERS OF INLAND REVENUE.

PROVISIONAL VALUATION — GROSS VALUE — TOTAL VALUE — DEDUCTIONS—GOODWILL—NOT TO BE INCLUDED IN DIFFERENCE BETWEEN GROSS VALUE AND FULL SITE VALUE—BUT DEDUCTED FROM TOTAL VALUE TO ARRIVE AT ASSESSABLE SITE VALUE —DIFFERENT KINDS OF GOODWILL—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), s. 25.

In an appeal against the provisional valuation of a licensed hotel, occupied by the owner, in a country town, *held*, (1) that the owner was entitled to a deduction for the value to him of the goodwill attaching to the premises which he would have left behind had he died or sold out completely, and (2) that the value of the goodwill should not be included in the difference between gross value and the value of the divested site, but should be deducted from total value to arrive at assessable site value.

The subject of the appeal was a property in Dalbeattie, which included the "King's Arms Hotel," of which the appellant was the owner and occupier. In the provisional valuation the figures were: Original gross value, £2,830; difference between gross value and value of the land if divested of buildings, trees, &c., £2,780; original full site value, £50; original total value, £2,830; deductions therefrom to arrive at assessable site value, £2,780; original assessable site value, £50. The appellant appealed against the provisional valuation on the ground that the original gross value was insufficient, as it ought to include goodwill, which should be afterwards deducted from total value to arrive at assessable site value.

The facts of the case sufficiently appear from the Note to the Referee's award. The appellant founded on *Earl Fitzwilliam v. Commissioners of Inland Revenue* [1914], A. C., 753.

The Referee decided that the gross value was £3,312; difference between gross value and value of divested site, £2,062; full site value, £1,250; total value, £3,312; deductions from total value to arrive at assessable site value: (a) difference as above, £2,062; (b) goodwill, £1,200 = £3,262; assessable site value (agreed between parties), £50.

Note.—The appellant is the owner of the subjects in question, which include an hotel ("King's Arms"), of which he is also the occupier, and the chief point in dispute was in regard to the goodwill.

Prior to the appeal being lodged some correspondence passed between the appellant's agents and the district valuer, in which the latter, after eliciting from the appellant's agents the fact that the gross and total values of £4,400, for which they were contending, included goodwill, proceeded to draw a distinction between goodwill value due to the "licence attached to this property" and "goodwill attached to the business," and remarked that "with this latter the provisional valuation has no concern."

The agents replied that they were unable to follow the two separate items of goodwill, and that they adhered to their view that the gross and

total values should necessarily include goodwill, and therefore that the district valuer "should begin by taking the saleable value including the "goodwill and thereafter deducting it in terms of the statute."

The district valuer declined to amend the provisional valuation, and the appeal followed.

The provisional valuation showed no deduction for goodwill, and it was only in the course of the hearing that any figures were mentioned as the value of the goodwill.

It was then explained for the Commissioners that a sum of £800 for "goodwill attributable to the licence" had been included in the £2,830 of gross and total values in the provisional valuation and also in the deductions from gross value to arrive at full site value—that is, the value of land divested of buildings, trees, &c.

It was also conceded for the Commissioners that in addition to (1) the value (in the goodwill attached to the subjects) of the licence, (2) a certain amount of value inured to the licensed subjects from the building up of the business conducted thereon, with the reservation that no part (if any) of that value, arising from the purely personal element of the particular owner of the business, should be included in goodwill.

It was further explained that the £800 was intended to cover the goodwill attributable to these two elements (1) and (2) of value.

That, it will be observed, was going a step further than the district valuer did who, in the correspondence referred to above, stated that goodwill attached to the business was not dealt with in the provisional valuation.

For the appellant it was contended that, for the purpose of the provisional valuation, it was unnecessary to split up the goodwill into its component parts seeing that the appellant was owner of the whole subjects including the goodwill, and the figure which his agents suggested as the value of the goodwill was £1,800, which figure was afterwards, in correspondence, modified to £1,400.

In arriving at the sum of £1,200, which I have placed on the goodwill, I had in view a figure which I believed fairly represented the value of the goodwill inuring to these subjects from their having been, through a long series of years, occupied as licensed premises, and apart from any consideration of the special qualifications (if any) of the person carrying on the business for the time being.

I communicated my suggested figures to parties for their observations.

Both parties agreed to my figure of £1,200 for goodwill.

As to my other figures the appellant thought the gross and total values (£3,312) were rather low, but I have not altered them. The Commissioners accepted them, without prejudice, however, to any right of appeal which they may have against my decision.

The Commissioners asked me, in order that matters may be quite clear should the case go further, to state in my decision—

(1) "What you include in the whole goodwill which in your opinion "pertained to the subjects as at April 30, 1909, *e.g.*, do you include (a) the "goodwill, if any, which would be acquired by a tenant if the appellant "chose to let the property and retain the ownership? or (b) the goodwill,

“ if any, which the appellant could take away with him if he sold the property ? ”

(2) “ Why you attribute the whole of the goodwill to the divested site and none to the buildings ? ”

While not recognising any obligation to comply with that request, I feel that it is not amiss, as this, so I have been given to understand, is the first appeal under the Act, in Scotland at least, in which this particular question regarding the goodwill of licensed subjects has been raised ; and I have therefore pleasure in stating (1) that I have included in the whole goodwill which in my opinion pertained to the subjects as at April 30, 1909, the value to the appellant of the goodwill attaching to these subjects (of which, as already stated, he is owner and occupier), and which goodwill he would have left behind had he died or sold out completely (*i.e.*, including the goodwill) on the above date.

That I conceived to be the value of the goodwill which fell to be determined in connection with the provisional valuation in this appeal.

I did not think it necessary in this case to consider the goodwill in either of the aspects set out in (a) and (b) of this query, as neither of them arises in this appeal.

(2) That in my opinion the deduction for goodwill fell to be made in the manner set out in the form of provisional valuation attached to notice of appeal (Form 77, Land, Scotland), and I have so dealt with it under item 17 of that form.

That procedure appears to me to be in strict accordance with the direction contained in Section 25 (4) (d) of the Act, where the first and, I think, the only reference to goodwill is met with.

There is no mention of goodwill among buildings and other things specified in Section 25 (2) of the Act, and of which the land is supposed to be divested for the purpose of arriving at full site value from gross value. Nor is there any suggestion that, although in the supposed divesting, when the buildings and these other things disappear for the moment, the goodwill is attached to any of them and must also go at that stage.

The amount of these deductions in respect of the divesting was, according to the valuer's provisional valuation, £2,780, which, taken from his gross value of £2,830, left only £50 as the *full* site value, although there was included in that value a sum of £800 (according to the valuer) for goodwill, which, according to the Act, Section 25, Subsection (4) (d), did not fall to be deducted until the later stage when arriving at assessable site value from total value by deducting (1) the difference in respect of divesting, and (2) goodwill.

It is clear that, in this case, the full site value and assessable site value could not be the same (£50) as shown in the provisional valuation.

I think the subjects have to be taken as a composite whole, in their then condition, as at April 30, 1909, and the scaling down processes applied as prescribed in the Act and as set out in the appropriate forms.

For the appellant : Walker & Sharpe, Maxwelltown.

For the Commissioners : H. Watson, of the Solicitor's Department, Inland Revenue.

Before THOMAS BINNIE, ESQ., *Referee*, 2nd March, 1916.

A. C. CARTER CAMPBELL *v.* COMMISSIONERS OF INLAND REVENUE.

ESTATE DUTY—PRINCIPAL VALUE—TOTAL VALUE—WHETHER PRINCIPLE OF VALUATION THE SAME—FINANCE ACT, 1894 (57 & 58 VICT., c. 80), s. 7 (5)—FINANCE (1909-10) ACT, 1910 (10 EDW. VII., c. 8), ss. 1 (b), 2 (2) (c), 25 (1) & (3), & 60 (2).

For the ascertainment of principal value for the purposes of Part I. of the Finance Act, 1894, and Part III. of the Finance (1909-10) Act, 1910, and total value for the purposes of Part I. of the Finance (1909-10) Act, 1910, the same principle or standard of valuation is applicable.

The appellant appealed against the decision of the Commissioners of Inland Revenue fixing the principal value of the estate of Possil, in the north of Glasgow, on the occasion of a death on November 24, 1911, at the sum of £190,850, on the ground that the value was excessive. Prior to the hearing before the Referee an arrangement had been made by the parties under which they agreed that if the principle of valuation adopted by the Commissioners was sustained the value was £182,866, while if the principle of valuation claimed by the appellant was sustained the value was £168,000. The facts of the case, and the contentions of the parties, are sufficiently contained in the note appended to the Referee's award.

The Referee decided that the value was £162,866, and appended to his award the following note.

Note.—In this appeal the parties have adjusted all figures as to values, leaving only a question of law to be decided by me; but on this question of law they are in sharp conflict.

On behalf of the appellant it is contended that in ascertaining the "principal value" of any property for the purposes of Part I. of the Finance Act, 1894, and Part III. of the Finance (1909-10) Act, 1910, a different and lower principle or standard of valuation must be adopted from the principle or standard of valuation employed in ascertaining the "total value" of the same property for the purposes of Part I. of the Finance (1909-10) Act, 1910. Put shortly, the appellant's contention is that the difference in principle between the two estimates of value is as follows: The principal value of any property is the amount which would probably be obtained for the property if it had to be put upon the market for realisation within a limited time after the date of the owner's death—in other words its value at a more or less forced sale. The total value of any property is the amount which a prudent owner would obtain for it by careful nursing and by selecting a proper time for realisation.

On behalf of the respondents, the Commissioners of Inland Revenue, it is contended that, while the principal value and the total value must be

estimated quite independently of each other, the principle on which each of them is based is exactly the same.

The parties have saved me much trouble by agreeing upon the following alternative sets of figures :—

If it is decided that the appellant's contention is sound, it has been agreed that the value of the Possil Estate, including feu-duties, as at November 24, 1911, being the date of Mrs. Sophia Atherton's death, is to be deemed to be

| | | | | | | | | |
|------------|-----|-----|-----|-----|-----|-----|-----|----------|
| | | | | | | | | £ |
| Land | ... | ... | ... | ... | ... | ... | ... | 60,000 |
| Feu duties | ... | ... | ... | ... | ... | ... | ... | 108,000 |
| | | | | | | | | <hr/> |
| | | | | | | | | £168,000 |
| | | | | | | | | <hr/> |

If it is decided that the respondents' contention is sound, it has been agreed that the value of the estate including feu duties, as at the said date, is to be deemed to be—

| | | | | | | | | |
|------------|-----|-----|-----|-----|-----|-----|-----|----------|
| | | | | | | | | £ |
| Land | ... | ... | ... | ... | ... | ... | ... | 74,866 |
| Feu duties | ... | ... | ... | ... | ... | ... | ... | 108,000 |
| | | | | | | | | <hr/> |
| | | | | | | | | £182,866 |
| | | | | | | | | <hr/> |

The point is an entirely novel and very interesting one, and there is not very much in the way of authority to help me to a decision ; but upon careful consideration of the arguments upon either side and of the decisions and authorities bearing upon the question, I feel that I must decide the appeal against the appellant.

I base my decision upon the following grounds :—

Section 60 (2) of the Act of 1910 reads : " In estimating the principal value of any property under Subsection (5) of Section 7 of the principal Act " (the Act of 1894), " in the case of any person dying on or after the thirtieth day of April, nineteen hundred and nine, the Commissioners shall fix the price of the property according to the market price at the time of the death of the deceased, *and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time.* " " Property," by Section 22 (1) (f) of the Act of 1894, includes real property, and by Section 23 (9) " real property " includes heritable property. The words I have underlined seem to me to negative any suggestion that principal value represents value at a forced sale, and in themselves would, I think, be sufficient to decide this appeal against the appellant.

Nor do I think that a comparison of what may be called the governing sections as to valuation in the two Acts helps the appellant. The governing section in the Act of 1894, Section 7 (5), reads : " The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased." (Then follows a proviso now repealed.) The governing section in the Act of 1910,

Section 25 (1), reads : " For the purposes of this part of this Act, the gross " value of land " (from which total value is to be ascertained by deducting fixed charges, &c.) " means the amount which the fee simple of the land, " if sold at the time in the open market by a willing seller in its then " condition, free from incumbrances, and from any burden, charge, or " restriction (other than rates or taxes) might be expected to realise." The similarity in the wording of these two sections is very marked. Short of being expressed in identical terms they could hardly have been more alike in essentials, and to the mind of a valuer they certainly would not suggest the employment of different and distinct principles of valuation for arriving at the values referred to.

Further, by Section 1 (b) of the Act of 1910, death is declared to be an occasion on which increment value duty is chargeable, and Section 2 (2) (c) lays down the method for ascertaining the increment value on the occasion of death. The site value of any land on the occasion of death is to be taken to be its principal value as ascertained for the purposes of Part I. of the Act of 1894, subject to the like deductions as are made under the general provisions of Part I. of the Act of 1910 for the purpose of arriving at site value from total value. The original site value is then to be subtracted from the occasional site value, and any remainder is increment value. If, however, as argued for the appellant, the principal value from which occasional site value is to be ascertained is always to be estimated on a lower principle from the principle adopted in estimating the total value from which original site value is to be ascertained, the subtraction in the vast majority of instances would result in a *minus* quantity ; and only in very rare cases would any increment value be disclosed. The appellant's contention, if sustained, would practically stultify Section 2 (2) (c).

As will be seen from the notice of appeal the respondents at first put the value of the Possil Estate including feu duties at £190,850 ; at the hearing they modified this to £182,866. The appellant has thus been successful on the merits of his appeal, but he has failed on the question of law which he raised. I think, therefore, that justice will be done by finding no expenses due to or by either party.

For the appellant : J. & F. Anderson, W.S., Edinburgh.

For the Commissioners : H. Watson, of the Solicitor's Department, Inland Revenue.

Certain of the Decisions of Referees, &c., reported or referred to in this issue are or may be under Appeal. The results of such Appeals will be reported or referred to in forthcoming issues of these Reports, but in the meantime the possibility of such decisions being reversed on Appeal should be borne in mind.

LAW CASES.

[IN THE COURT OF APPEAL IN IRELAND.]

LENNANE v. INLAND REVENUE COMMISSIONERS.

[NOVEMBER 12TH, 1914.]

Increment Value Duty—Gross Value—Principle on which Fee Simple Value assessed—Weight to be given to Evidence of Letting Value subsequent to the “Appointed Day”—“Occasion” before Provisional Valuation—Sale in “Open Market”—Speculative Opinion as to Value—Finance (1909-10) Act, 1910, s. 25 (1).

In the year 1909, and prior thereto, a piece of ground, held with other land under a fee farm grant, was naked ground; the adjoining land was let as a building site for small houses. In the year 1911 the said piece of ground was let for a term of years for a cycle factory, at a rent equal to double the rent for which the small houses were let. The grant of the lease being “an occasion” under the Finance (1909-10) Act, the Commissioners of Inland Revenue claimed increment value duty, and then for the first time the “provisional valuation” under the said Act was made. The valuers for the Commissioners valued the piece of ground as of April 30, 1909, at £558, on the basis of its value for building purposes. The owner contended that it should be valued on the basis of the rent reserved by the lease in 1911 as there had been no increase in the value of property between 1909 and 1911. The Referee and the County Court Judge having affirmed the value as found by the valuers of the Commissioners of Inland Revenue, the owner appealed.

Held, by the Court of Appeal that the valuation arrived at by the Referee was based on the facts and circumstances existing at the time, and that the appeal must fail as there was no evidence of facts existing in 1909 apart from speculation, which could reasonably affect the ultimate value to be arrived at under the Act. The opinion of the appellant's valuer might be a good guess, but there was no fact on which it could rest.

Inland Revenue Commissioners v. Clay ([1914], 3 K.B., 466, and *Glass v. Inland Revenue* [1915], S. C., 449) distinguished.

This was an appeal from the Recorder of Dublin under Section 33 (4) of the Finance (1909-1910) Act, 1910. The appellant (the owner of the

property) asked that in lieu of the figures fixed by the Inland Revenue valuers, and affirmed by the Referee and Recorder of Dublin, the "original gross value" of the land, the subject of the appeal, should be fixed at £960, and that the "original full site value" should be fixed at £960, that the "original total value" should be fixed at £880, and that the "original site value" should be £880. No rules having been yet made for appeals under the section, the appeal had been set down by leave of the Court of Appeal, and the Court directed that the evidence given on the hearing before the Recorder might be brought before it by affidavit. The affidavits filed by the appellant and respondent respectively purported to set out only the evidence actually given before the Recorder, and both parties agreed that the evidence was accurately set forth in these affidavits. The appeal was concerned with the provisional valuation of a bare piece of ground in Pleasants Street, off Camden Street, in the city of Dublin. In and for many years prior to the year 1909 the plot, which was held with adjoining property under a fee farm grant, had been a naked site, but subsequently in the year 1911 the appellant had granted a building lease of the plot for the erection of a cycle factory, the granting of such lease being an "occasion" on which increment value duty became payable under the Finance (1909-1910) Act, 1910. No valuation under the provisions of that Act was made by the Commissioners of Inland Revenue until after the delivery to them of the particulars of the granting of the said lease. On November 9, 1912, a provisional valuation was issued by the Commissioners, the figures being as follows: The original gross value, £335; original assessable site value, £335. Objection was taken by the appellant to these figures as being too low, and on April 12, 1913, the Commissioners issued an amended provisional valuation, in which the figures were as follows: Original gross value £558, and the original assessable site value £474; the difference of £84 being in respect of apportionment of the fee farm rent payable out of the lands with others. Objection was again taken by the appellant, but the Commissioners refused to further amend, and an appeal was taken to the Referee who affirmed the Commissioners' valuation, and from that decision an appeal was taken to the Recorder of Dublin who also refused to vary the figures. From that decision the present appeal was taken. The evidence given orally before the Recorder as set out in the affidavits filed on this appeal was to the above and to the following effect:—

The piece of ground was held by Alderman Kernan, with other land, under the said fee farm grant, and was kept unbuilt on with the hope that its letting value would increase. The adjoining land to this naked site was occupied by small dwelling-houses. Alderman Kernan died in 1899, and the appellant is his successor in title. On the "appointed day," April 30, 1909, the ground was naked ground, but on December 6, 1911, it was leased for a term of 200 years at £48 per annum. The lease contained a covenant by the lessee to expend £1,800 on buildings; in fact about £3,000 was so spent. An experienced valuer (Mr. James Adams) swore that the rent of £48 might have been expected in 1909, as between 1909 and 1911 there had been no increase in the value of the ground, but if anything a decrease. The value should be calculated on the rent for the premises as a site for a

factory and not as a site for small houses. Evidence was given of the value of adjoining lands in support of the appellant's contention.

Mr. Hugh Kennedy, for the appellant: This appeal is concerned with the methods of valuation applied by the Commissioners of Inland Revenue in making valuations under Section 25 of the Finance (1909-10) Act, 1910, and in the facts of the case turns wholly on the first subsection of that section. What the Commissioners have to ascertain is the value on the basis of what might be expected to be obtained on a sale of the property in the open market free from restrictions. Admittedly there was no change in the value of the property between the years 1909 and 1911, and we submit that the actual transaction in 1911 is in these circumstances the best test of the value, and therefore that the Commissioners should adopt the capital value of the rent obtained in the lease, £960, as the figure of the gross value in the provisional valuation. The Commissioners' figure, £558, is confessedly based on letting value as sites for small houses of the class of very old houses which have survived in the street. He cited *Inland Revenue Commissioners v. Clay* (1914), 3 K.B., 466; *Glass v. Inland Revenue* (1915), S. C., 449 (Court of Session).

O'Brien, L.C., in delivering judgment, said: We have had to deal for the first time with the effect and application of Section 25 of the Finance Act, 1910. That is my only excuse for giving more detailed reasons than I otherwise would have done, because I am of opinion there is no ground on which we could, or ought, disturb the finding of the Referee or the order of the Recorder.

Section 25 requires certain values to be ascertained. [Reads section.]

The problem to solve is rather difficult and special, viz., What is the value the land would be expected to realise at a date anterior to the date when the Referee or Court determine the true amount.

The question here arises in connection with a small plot of land. [States facts.]

It is argued that, putting ourselves back to 1909, we are to conceive that in 1911 this large sum, £960, is to be obtained, and that £558 cannot be deemed the true basis, but that we must enhance the value to a great extent.

Two cases were cited—*Inland Revenue Commissioners v. Clay* ([1914], 3 K.B., 466), and a Scotch case, *In re Robt. Glass*. They decide a perfectly fair proposition, but it does not go far enough for the appellant's case. In *Clay's* case it appeared there was in existence a nurses' home next to the site, and that £750 had been offered by the nurses' home. After 1909 they were compelled to pay £1,000. The Court of Appeal held that as the existence of the home was a fact, and there being a probable buyer in existence, the Referee could take those facts into consideration in showing an enhanced value as to that particular site. It is sought to press that case further, and it is contended that if the fact of the nurses' home and the offer had not existed, still that in 1909 there should have been a speculation as to the site having a larger value. That would not be the result on the facts before the Court in the present case.

It is clear that case is no authority for the proposition that when you

have no concrete fact in existence in 1909 the Referee must consider the probability of a buyer. That appears to me untenable.

But it is said evidence was given by a valuer, and that he thought that probably there might be a demand of this site for a factory. That is an opinion, but there is no fact on which it could be based. There is nothing in 1909 from which you could say it had an enhanced value. There is an absence of the facts which in Clay's case enabled the Referee to arrive at a fair value. Here the Referees find a street. They must consider all the circumstances. They find the site was used for houses alone, and they took the maximum on that basis—their only basis. There is nothing to show the Referees' method was wrong.

As to the Scotch case, there exactly the same principle was decided. [Reads from same; Lord Johnston's judgment]: "If there is a cause operating on the value at the date of the original valuation, and which continues to operate in an increased degree at the date of the first subsequent transaction, it would be manifestly unfair to take it into consideration in the latter case and not in the former." There the Judges held that as a provisional order before 1909 existed for acquiring lands within the catchment area of the Commissioners' reservoir, and which fructified into purchase of the lands by the Commissioners, it was shown there was something in existence in 1909. In the present case we have only the mere opinion of a valuer, not based on any facts, that in 1909 there would be an increased value. You must be guided by the facts and circumstances existing at the time. The appellant fails because she cannot place any facts existing in 1909, apart from speculation, which could reasonably affect the ultimate value to be arrived at under the Act.

Holmes, L.J.: I entirely agree. This is, I think, the first case of the kind that has come before us. I hope that in future the cases under the Act coming to this Court will be as easy of solution. What we want are facts. I cannot find any here. I have only mere speculation as to the value of premises in 1909. It may be a good guess, but I find nothing on which it can rest.

Moriarty, L.J. [states facts]: When Mrs. Lennane put a value on the land for the purpose of probate in 1899 she said it was of no value—not that that should affect the decision of this case. If we had any evidence that any *bona fide* offer was made of over 6s. a foot to her for the land and she had refused it as being inadequate, that would be a consideration to go on. Or if in the neighbourhood there existed anything like the home in Clay's case, or a provisional order to take lands as in the Scotch case; or if it was a house in Lower Leeson Street and St. Vincent's Hospital was acquiring the adjoining houses, such facts ought to be taken into account.

But there is nothing to show that this waste land in 1909 was worth anything. Mr. Cheek in his evidence puts the highest value which this site in his opinion could fetch in 1909 as the letting value of the ground for building houses of the class then existing there. The statute states the tests to be used. [Reads Section 25 (1).] If it had been offered for sale in 1909, who would have acquired it? There was no demand then for cycle factories—nothing but a demand for a site on which to build houses.

When fixing a problematic value the Referees adopted that standard—a right one—and put on a value of 6*s.* a foot. The principles to be applied are exceedingly clear, and are stated in the section itself (Section 25 (1)). Mr. Kennedy says it is to be valued at 12*s.* a foot in 1909. What evidence is there that anyone would then have given that for factories or anything else? There are no facts to bring the case within the cases cited.

For the appellant: Hugh Kennedy (instructed by Messrs. Lynch & Deering, Solicitors).

For the respondents: The Solicitor-General and James Rearden (instructed by the Solicitor for the Inland Revenue).

[KING'S BENCH DIVISION.]

MORRISON *v.* INLAND REVENUE COMMISSIONERS.

[JANUARY 25TH, 1915.]

Revenue—Land Value—Assessable Site Value—Walls sheltering Sheep—“Buildings”—“Other Structures . . . which are appurtenant to or used in connection with any such Buildings”—Divestment—Appeal from Referee on Question of Costs—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 25, (2).

A farm was divided into fields and bounded by substantially built stone walls from 5 to 6 feet in height, and the walls also served as shelter to stock on the farm.

Held, that they were not “buildings” or “other structures . . . appurtenant to or used in connection with” farm buildings, within Section 25 (2) of the Finance (1909-10) Act, 1910, and, consequently, that the assessable site value of the land was not to be fixed as if the land were divested of these walls.

The Court will not entertain an appeal against the Referee on a question of costs.

Rowlatt, J.: In this case the question is whether the value of these walls is to be deducted under Section 25 (2) of the Finance (1909-10) Act, 1910, as “buildings” or “other structures . . . appurtenant to or used in connection with any such buildings.” The walls themselves bound the farm and divide the fields of the farm. They are very largely for the purpose of division, because they are very much more numerous in the more important and fertile lands on the lower ground.

They also serve upon the higher ground as a useful protection to the sheep in the case of storms. The farmer is glad to have them there instead of having wire fences. There are some pieces of wall which do not serve the purpose of division at all, known as "beals," which are simply pieces of wall erected in the middle of these rough pastures, behind which the animals can find shelter.

Now the word "buildings," as used in Section 25 (2), has in itself no limitation, and there is nothing in the Act to show what is meant by that word, except this : After the word "buildings" the subsection goes on to provide that other structures appurtenant to or used in connection with any such buildings shall also be divested, and counsel for the respondents contends that the Act, in speaking of "such buildings," meant buildings to which other structures could be appurtenant or in connection with which other structures could be used. Although the language is not very artistic, that does appear to be its meaning. It is quite clear that "buildings" does not mean anything that one can by any means speak of as being built ; it means buildings in a more narrow sense than structures, because there are other structures of a limited class which may also be considered under the subsection. It seems to me, as one has to put a limited meaning on the word "buildings," a sense limited in the direction I have indicated, that the only way to deal with it is to look at the nature of the property one is dealing with, for it is impossible to say that the question whether a thing is a building or not depends on the character of the workmanship put into it. One may have a very substantial wooden paling, which is not a building ; but exactly the same character of work, if prolonged round a rectangle and continued at the top, would make a building the same as a shed. I think that one must look at the character of the erection and the nature of the property on which it is, and its functions on that property. I put in the course of the argument the case of a fives court. Assume that, apart altogether from his dwelling, a man has a small piece of land which it is not easy to use in any other way, and he thinks he can turn it to profitable use by erecting a fives court upon it, or a switchback railway, or something of that kind. It seems to me that, although the workmanship involved might not necessarily make those things buildings, still there would be an erection used as an erection, and the land would be put to the purpose of carrying that erection, and it would be said in that connection that it was a building upon the land. But in the case of a farm the question is, What are farm buildings ? That seems to me a straightforward and sensible way of construing the section. It has been held in the Court of Appeal, in *Warte's Executors v. Inland Revenue Commissioners* (83 L. J., K.B., 1617 ; [1914] 3 K.B. 196), that an earth dyke to keep out the sea from a farm is not a building ; and the only difficulty which that case presents to me is in the narrowness of its application, because it was dealing with something far away from anything which could be considered a farm building. The Court of Appeal had only to decide the question before them, and I do not think that I can possibly say that that decision binds me or even leads me to hold that a similar dyke, if made of stone or bricks and mortar, would be a building. I think that the word "buildings" in this

subsection in relation to a farm means what one would ordinarily call farm buildings. If it were said that this farm had very excellent buildings upon it, nobody conversant with farming language would suppose that reference was being made to these walls which run all over the farm to divide the fields, and, it may be, also to shelter the sheep. Therefore I do not think they are "buildings" within the meaning of the subsection. Then the question is whether they are "other structures . . . appurtenant to or used in connection with any such buildings." All the farm is used in connection with the farm buildings in one sense, but the words cannot mean that. What is intended to be described is a structure, the use of which is immediately connected with the use of the building. I will not give an instance of it, because giving instances is not a very useful practice; instances are misleading. Here all that can be said about these walls is that the sheep which shelter in the farm buildings, strictly so called, when they go forth in the open country in the summer find a substituted shelter behind these walls. I suppose it is suggested that if it was not for the walls on the hill they could not be driven out of the building, but it seems to me an entire fallacy to suggest that that makes them walls used in connection with the buildings for this purpose. The sheep must have protection against a certain amount of cold. If they are not in the buildings they get the protection of the walls, but I am utterly unable to see how there can be any connection between the uses of the two things in the sense required by the statute. The buildings and the walls are used alternatively and at different times for the same purpose, but that does not seem to me to indicate any connection between the two. I think some sort of subordination of one to the other is involved in the words of the subsection. I do not think these walls can be said either to be appurtenant to farm buildings or used in connection with them, merely because the sheep shelter by them. Therefore I think that the appeal fails.

It has been contended that I ought to make an order as to costs which the Referee ought to have given to the appellant. I am unable to do so. Orders of that kind are left to the Referee, and I am not going to initiate a practice of appealing to the Court only on the question of costs awarded by the Referee.—(84 L. J., 1166.)

[KING'S BENCH DIVISION.]

BRAKE v. INLAND REVENUE COMMISSIONERS.

[JANUARY 26TH, 1915.]

Revenue—Undeveloped Land Duty—Land Developer—Land held for Sale—Land “used bona fide for any Business”—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 16 (2).

Where a person carried on the business of a land developer, utilising his land in connection with his business by its development with a view to sale in accordance with the demands of the market for the time being, and with the aid of a system of advertisement designed to attract purchasers :—

Held, that the land was not being “used *bona fide* for any business, “trade, or industry” within the meaning of Section 16 (2) of the Finance (1909-10) Act, 1910, and was chargeable with undeveloped land duty.

Rowlatt, J. : The question in this case is whether this land is “used “*bona fide* for any business, trade, or industry.” It seems to me to be too clear for argument that the use of land for any business, trade, or industry means the employment of the land as land. That means, of course, its physical employment, not because one reads in the word “physically” before “used” in the statute, but because the use of the land means the use of the land as land, and that brings in the idea of physical use. The use of land intended by the statute is not the use of it as a saleable article held in a condition in which, regarded as land, it is unused for business, trade, or industry, whether it is so held as a marketable commodity, or as a sample, or for any other ulterior commercial purpose. For these reasons I think that this appeal fails.—(84 L. J., 759.)

[KING'S BENCH DIVISION.]

INLAND REVENUE COMMISSIONERS v. ST. JOHN'S
COLLEGE, OXFORD.

[JANUARY 26TH, 1915.]

Revenue — Reversion Duty — Grant of Lease in consideration of Surrender of Old Lease and Payment of Sum of Money—Basis for ascertaining Total Value of Land at the Time of Original Grant of Lease—To be ascertained “on the basis of the Rent reserved and Payments made in consideration of the Lease”—“Payments made”—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 13 (2), 25 (3).

For the purpose of ascertaining the benefit accruing to a lessor on the determination of a lease, in respect of which he is assessed to reversion duty, it is necessary, under Section 13 (2) of the Finance (1919-10) Act, 1910, to ascertain the total value of the land at the time of the original grant of the lease “on the basis of the rent reserved and payments made “in consideration of the lease.”

The lessors were accustomed to grant a lease of certain premises for forty years at a nominal rent, and at the expiration of fourteen years to grant a new lease for forty years in consideration of the surrender of the existing lease, payment of the same rent, and of a sum of money.

Held, that in ascertaining the above total value recourse must be had to the definition of total value in Section 25 (3) of the Act—that is its value in the open market—but that the calculation must be on the basis of the rent reserved and payments made in consideration of the grant of the lease, as directed by Section 13 (2), and that accordingly, in the above circumstances, the total value must be ascertained on the basis of the rent and of that for which the payment was made—namely, the exchange of a term of twenty-six years at that rent for a forty years' term at the same rent.

Held, also, that the surrender of the existing lease was not a payment made within the meaning of Section 13 (2), and could not therefore form a part of the basis for the above calculation.

Appeal by way of petition against the decision of a Referee under the Finance (1909-10) Act, 1910, against an assessment to reversion duty on the determination of a certain lease, charged under Section 13.

By the lease in question, dated December 8, 1896 (called herein “the “lease of 1896”), made between the respondents, St. John's College, Oxford, as freeholders, of the one part, and William Eaglestone (herein called “the lessee”) of the other, the respondents, “in consideration of

"the sum of £95 8s. sterling to them paid by the said lessee, and for other "good considerations," demised to the lessee certain premises for the term of forty years from October 10, 1896, at the yearly rent of £2 2s. A previous lease, dated October 15, 1884 (called herein "the lease of 1884"), was surrendered. This was in accordance with a long-established custom, which, it was admitted, had no contractual force, whereby at the expiration of fourteen years after the date of the grant of a lease a new lease for a similar term of forty years, at the same rent, and subject to a similar payment of £95 8s., was granted, the existing lease being surrendered.

On October 10, 1910, the respondents granted a lease of the same premises for a similar term of forty years, expressed to be in consideration of the surrender of the lease of 1896, and of the above payment of £95 8s. On January 27, 1912, the Commissioners gave notice in writing to the respondents of their assessment to reversion duty under Section 13 (1) of the Finance (1909-10) Act, 1910, in respect of the benefit accruing to them by reason of the determination on October 10, 1910, of the lease of 1896. The Commissioners arrived at the assessment as follows: They ascertained the total value on October 10, 1910, as defined by Section 25 (3) of the Act, in accordance with Section 13 (2), to be £734 (which was not disputed), and the total value at the time of the grant of the lease of 1896 (purporting to be on the basis of the rent reserved and payments made in consideration of that lease in accordance with the last-mentioned subsection) to be £168 13s. They made no deductions from the £734 for works executed or expenditure of a capital nature, or for compensation payable by the lessors on determination of the lease, and accordingly ascertained the value of the benefit accruing to the respondents at £565 7s., upon which the duty amounted to £56. This being discounted as provided for in Section 3 (2) of the Revenue Act, 1911 (1 Geo. V., c. 2), gave a sum of £20 3s. 11d. as the net reversion duty.

At the hearing before the Referee it was agreed (a) that the total value of the hereditaments as on October 10, 1910, was £734; (b) that no part of the total value was attributable to works executed or expenditure of a capital nature incurred by the lessors during the term; and (c) that, if the grant of the new lease of October 10, 1910, constituted compensation payable by the lessors at the determination of the lease of 1896, the amount to be deducted therefor from the total value of £734 was £620. The Commissioners admitted that if the deduction under (c) ought to be made no reversion duty was payable upon the determination of the lease of 1896.

In ascertaining the total value at the time of the original grant of the lease of 1896 on the basis of the rent reserved and payments made in consideration thereof, the Commissioners disregarded the fact that part of the consideration for the grant of the lease was the surrender of the lease of 1884. They accordingly proceeded as follows: (a) They ascertained the capital value at thirty years' purchase of the yearly rent of £2 2s., which is £63. (b) They decapitalised the fine of £95 8s. on the basis of an annual payment (on the 6 per cent. tables) spread over the whole term of forty years, which was granted by the lease of 1896, which worked out as follows: £15 being the present value (on the 6 per cent. tables) of £1 per annum for forty years, £95 8s. is the present value (on the same tables) of

an annual sum of £6 7s. 2d., payable for the same period. (c) They then ascertained the capital value (on the 6 per cent. tables) of the said annual sum of £6 7s. 2d., on the footing of it being an annual payment in perpetuity, which is £105 13s. This sum, being added to the said £63, gave a total value of £168 13s.

The respondents contended for a different method of computation. It was proved before the Referee that the said fine of £95 8s. was computed upon the basis of an annual payment of a further rent of £47 14s. (which, if added to the said annual rent of £2 2s., would be the annual value to the respondents on October 10, 1910), for the term of fourteen years as from October 10, 1896, being the date at which the lease of December 8, 1896, would have expired by effluxion of time. And the Commissioners admitted that the £95 8s. represented approximately the present value as on December 8, 1896, of an annual payment of £47 14s. for fourteen years deferred for twenty-six years. The respondents therefore contended (a) that the real annual value to them on December 8, 1896, was £49 16s.—namely, £47 14s. plus £2 2s.; (b) that they had, by reason of the fines paid on the grant of previous leases, received the value of the difference between the real annual value to them of the hereditaments and the yearly rent of £2 2s. up to October 10, 1936; and (c) that the total value of the hereditaments at the time of the original grant of the lease of 1896, ascertained on the basis of the rent reserved and payments made in consideration of the lease, was the capital value on the 6 per cent. tables of an annual sum of £49 16s., payable in perpetuity, which capital value was £830. The respondents accordingly contended that the total value on the grant of the lease of 1896 was £830. The Commissioners contended that (a) upon the true construction of the Finance (1909-10) Act, 1910, and the Revenue Act, 1911, a benefit accrued to the respondents by reason of the determination of the lease of 1896, upon the value of which reversion duty was payable; (b) the grant of the new lease of October 10, 1910, ought not to be taken as compensation payable by the respondents at the determination of the lease of 1896; and (c) that their method of ascertaining the total value at the time of the grant of the lease of 1896 was correct.

Rowlatt, J.: The question in this case is as to the proper way of calculating the amount upon which reversion duty is payable. Reversion duty is charged by Section 13 of the Finance (1909-10) Act, 1910, upon the benefit accruing to a lessor by reason of the determination of a lease, and that indicates taxation of the character I am about to mention. While under lease, land is not at the disposal of the lessor, but when it falls in it becomes at his disposal, and this taxation is aimed at the benefit which accrues to him, which benefit is represented as the difference between two values which have to be fixed as at the commencement of the lease and as at its determination. Counsel for the respondents has indicated, for the purpose only of keeping the point open, that, inasmuch as the lease only determined upon the terms that the property was at once granted away again, no benefit at all accrued to the lessor. But I need not deal with that point. No question arises in this case as to the total value under Section 13 (2) of the Act at the time the lease of 1896 determined. The

only question is as to the total value at the time of the original grant of that lease. The words of Subsection (2) are : "the total value of the land at the time of the original grant of the lease." Those words, coupled with the preceding words, "the total value (as defined for the purpose of the general provisions of this Part of this Act relating to valuation) of the land at the time the lease determines," indicate that the comparison is to be made between the total value as defined in the Act, on the determination of the lease, and the total value (which I should assume, at present, was the same value) at the commencement of the lease. The words "total value" have no meaning at all except by virtue of the definition in Section 25 (3) of the Act, and I do not think that in construing an Act of Parliament I can read the word "total" as being there *per incuriam*. Therefore I am driven to Section 25 (3) which defines "total value," in order to discover the two sums between which the comparison is to be instituted. I am driven to do that if the taxation is really upon the increase of value in the property which has taken place. But I am directed by Section 13 (2) to observe a certain limitation—namely, that the total value is "to be ascertained on the basis of the rent reserved and payments made in consideration of the lease." It is upon the meaning of that direction that this question really arises.

I do not myself think that there is any difficulty in reading Section 13 (2) with Section 25. It seems to me that what has to be done is this : Section 25 (1) has to be looked at to see what is the gross value of the land as ascertained by chaffering in the market between a willing seller and a willing buyer ; then, to get total value there must be deducted (Subsection (3)) the amount required to represent the public rights of way, restrictive covenants, &c. But in ascertaining the gross value, the basis of the rent reserved and payments made in consideration of the lease must, by virtue of the combined effect of Section 13 (2) and Section 25, be regarded. How am I to apply the words "to be ascertained on the basis of the rent reserved and payments made in consideration of the lease" ? Counsel for the respondents contend that the surrender of a lease is a payment within the meaning of the subsection. I think that is an unarguable position. The surrender of a lease is not a payment. But that is far from concluding the case. Value is to be ascertained "on the basis of the rent reserved and payments made." If a payment is made when the lease is granted—for example, in the case of a fine—it is not suggested that I ought simply to take that lump sum and add it on to the value of the rent reserved ; that would be an absurdity. I have to take the payment with reference to what it is paid for. If the property is in hand and a new lease is granted—the case which most often occurs—I have to consider as a basis the length of the term granted, and the payment made only affords a basis upon which any desired calculation can be made if the payment is taken with reference to the number of years at a certain rent which the payment buys. How am I to apply that basis in this case, where a payment was made in consideration of the exchange of a leasehold interest with twenty-six years to run for a lease with forty years to run ? It is said by the appellants that I must simply take that payment as applicable to the forty years and divide it up. But that is not looking at the

substance of the transaction, and assessing the property upon the basis of the payment made. In fact the payment was not made for forty years but for fourteen, deferred to the end of twenty-six years from that date ; and when that transaction is looked at, and the question as to what light the payment throws upon the value of the property is considered (which is what has to be done if the value is assessed upon the basis of a payment), the only light which the payment throws upon the value of the property—the only basis which it affords for calculating anything—is the information which it gives as to how much would be paid for the extension of twenty-six years' interest into a forty years' interest, which is the same thing as a leasehold interest for fourteen years at the expiration of twenty-six years. Therefore I must split up the £95 8s. in that way, and not simply reduce it to an annual sum on the footing that the property was in hand when the new lease was granted ; and, according to the calculation which has been made, the £95 8s. represents two years' annual value, having regard to the exchange in the two leasehold terms which are affected by the transaction. The proper figure payable was two years' annual value, and that is £95 8s. ; therefore, if the total value is to be assessed on the basis of the rent reserved and payments made, what has to be done is to assess it on the basis of two guineas a year rent, and a payment of £95 8s. for the exchange of the twenty-six years' term at that rent into a forty years' term at the same rent, and on that footing I understand the Referee has decided in favour of the respondents. I am bound to say that I was very much of the contrary opinion during a large part of the argument ; but now that I see the real relation of the payment of the fine to the transaction in question, I have come clearly to the conclusion that the only basis which the payment of £95 8s. affords at all is the one I have indicated. Of course the argument based on the supposed general scope of the statute is open to the respondents. It is perfectly clear that in point of arithmetic they are right if the comparison is to be for the purpose of ascertaining the increase of value of the land in the meantime. But I am not in the least influenced by that consideration. It seems to me I have to look at the words of the Act of Parliament and apply them strictly, but so as to make them work out in a sensible way by reading "payment" with regard to that for which the payment is made, and not by taking the payment as being made for the same thing in the case of an immediate term granted, and in the case of a deferred term granted upon the surrender of an existing lease. Therefore I am of opinion that the appeal fails and must be dismissed.—(84 L. J., 922.)

[KING'S BENCH DIVISION.]

INLAND REVENUE COMMISSIONERS v. SHEFFIELD AND
SOUTH YORKSHIRE NAVIGATION COMPANY.

[JANUARY 26TH, 1915.]

Revenue—Increment Value Duty—Lease of Minerals—Term “not exceeding fourteen years”—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 1, 22.

Under Section 22 of the Finance (1909-10) Act, 1910, increment value duty is payable in respect of a lease of minerals, although the lease is for a term not exceeding fourteen years.—([1915] L. J., K.B., 922.)

[COURT OF APPEAL.]

[FEBRUARY 28TH AND MARCH 11TH, 1916.]

In 1909 the appellant company granted a mining lease for a term of ten years from January 1, 1910. The Commissioners assessed increment value duty to the sum of £57 for the year 1912-13 upon the minerals comprised in the lease under Section 22 of the Finance (1909-10) Act, 1910. The company claimed exemption on the ground that the term of the lease being for ten years only it came within the exception contained in the Finance (1909-10) Act, 1910, Section 1 (a).

Held, by Cozens Hardy, M.R., and Warrington, L.J. (Phillimore, L.J., dissenting), that increment value duty was payable.

Decision of Rowlatt, J., King's Bench Division (84 L. J. R., 922), affirmed.

[MARCH 11TH, 1916.]

Cozens-Hardy, M.R.. This appeal relates to increment value duty in respect of coal mines. Before dealing with the particular facts, it is desirable to consider the relevant sections of the Finance Act, 1910. Section 1 imposes on the increment value of any land a duty called increment value duty. The scheme of the section is reasonably clear, and the following propositions may be stated :—

- (A) It is payable only on an “occasion,” which is defined as being either a transfer on sale or the grant of a lease for more than

fourteen years or death. I purposely omit Subsection (c) which relates to corporations.

- (B) The increment is the difference between the site value on the "occasion" and the site value on the 30th April, 1909, or on any subsequent "occasion," and the duty is one-fifth of this capital sum.
- (C) The duty is payable by the grantor or lessor, and not by the purchaser or lessee.
- (D) "Land" in Section 1 includes minerals.

When we come to Section 22, we find a new code relating to minerals: that which is called increment value duty is made payable in respect of minerals comprised in a mining lease. But the duty bears a very slight resemblance to the duty under Section 1, and it seems a pity that a different name was not given to it.

- (E) It is not charged on the "*occasion*" of the grant of a mining lease.
- (F) The duty is charged annually, instead of being estimated as a capital sum.
- (G) It is recoverable like mineral rights duty.
- (H) It is called an "*increment*" value duty, although the value of minerals which are being worked grows less and less, and it is barely possible to suggest a case in which there might be an increment.
- (I) There is no reference to April 30, 1909, except in Section 22 (2) where minerals which on that day were comprised in a mining lease are exempted from increment value duty.
- (J) Minerals comprised in a mining lease are treated as a separate parcel of land (Section 23 (2)).

Several difficulties arise in attempting to read Section 1 as modified by Sections 22 and 23. Is the "*occasion*" to be wholly disregarded, not only in the case of a grant of a mining lease, but also on the "*occasion*" of a death? Upon the whole, though not without doubt, I think the duty payable annually, begins to be payable and continues to be payable without reference to any "*occasion*." Subsection (3) is obscure, but it professes to lay down certain hypothetical principles by the application of which the annual payment is to be ascertained. Take two imaginary figures and take two-twenty-fifths of the difference. The Referee has worked out the figures, and his finding on this point is not challenged.

As to the particular facts. The minerals were comprised in a mining lease dated December 23, 1909, for a term of ten years from January 1, 1910, which lease is vested in the appellant's lessee. On March 13, 1912, a provisional valuation was made, and on November 10, 1913, duty was assessed at £57. An appeal was presented to Mr. Martin, one of the

Referees. He held that no increment value duty is payable, on the ground that a lease for a term not exceeding fourteen years is exempt under Section 1. I am unable to accept this view. The enactment in Section 22 (1) that "no increment value shall be charged on the occasion "of the grant of a mining lease" really repeals the whole of Section 1 (a) so far as a mining lease is concerned, and does not leave the fourteen years as a relevant fact. The Commissioners appealed, and Mr. Justice Rowlatt reversed the decision of the Referee and held the duty payable. I agree with the decision of Mr. Justice Rowlatt. Section 22 begins a new code dealing with minerals comprised in a mining lease or being worked. It is necessary to refer to Section 1 to ascertain the rate of duty, viz., 20 per cent., but for no other purpose. Section 1 is not the only charging section, for Section 22 (3) creates an annual charge. So far as minerals comprised in a mining lease are concerned, the charge in Section 1 is swept away and a new charge of duty, under the old name, but with very different incidents, is substituted. The provision in Section 1 excepting a lease of fourteen years has in truth no relation to the duty payable under Section 22 when once the idea of an "*occasion*" is given up, and an annual payment dependent upon annual workings is the measure of the duty. The conclusion seems to me irresistible that the existence of a lease for more or less than fourteen years is an irrelevant fact.

In my opinion the appeal fails, and must be dismissed with costs.

[KING'S BENCH DIVISION IN IRELAND.]

INLAND REVENUE COMMISSIONERS v. COOKMAN.

[JANUARY 26-28TH; FEBRUARY 25TH, 1915.]

Revenue—Estate Duty—Lands bought-out under the Land Purchase (Ireland) Acts subject to an Annuity—Property passing on Death—Principal Value how ascertained—"Incumbrance"—Finance Act, 1894, ss. 1, 7 (1) (5); Finance (1909-10) Act, 1910, s. 60 (2).

Held, the principal value for the purpose of estate duty of a holding purchased under the Irish Land Purchase Acts, which at the death of the proprietor is subject to a land-purchase annuity, is the price which the holding would fetch at the time of the death of the deceased if sold in the open market, subject to the land purchase annuity. Such annuity is not an "incumbrance" within the meaning of Section 7 (1) of the Finance Act, 1894.

Appeal under Section 33 of the Finance (1909-10) Act, 1910, against the decision of the Referee (reported in Part 6 at p. 342, where the facts of the case and the decision of the Referee are reported).

The petitioners, the Commissioners of Inland Revenue, submitted that the decision of the Referee was erroneous, on the ground that the principal value within the meaning of Section 7 (5) of the Finance Act, 1894, and Section 60 of the Finance (1909-10) Act, 1910, of the lands was correctly estimated at £2,357 17s. 7d. The respondent submitted that in arriving at the principal value of the said lands under the last-mentioned section the Commissioners are not entitled to have regard to the annuity or mortgage payable out of the said lands; (2) that the redemption value of the said annuity can only be regarded by way of deduction from the said principal value when ascertained. By consent during the arguments the petition was amended by adding, to the grounds on which it was submitted the Referee's decision was erroneous, the following: "Or in the alternative that the property passing within the meaning of Section 1 of the Finance Act, 1894, was the equity of redemption in the lands, and that "the principal value . . . was the value of the equity of redemption."

Authorities cited: *Attorney-General v. Robinson*, 35 Ir. L. T. R., 37, (1901) 2 I. R., 77; *Earl Cowley v. Inland Revenue Commissioners*, (1899), A.C. 198; *Attorney-General v. Duke of Richmond* (1907) 2 K.B., 923, (1908) 2 K.B., 729, (1909) A.C., 466; *Inland Revenue Commissioners v. Clay* (1914), 3 K.B., 466; 57 & 58 Vict. c. 30, ss. 7 (1) (5), 16, 22 (1) f.k.; 10 Edw. VII., c. 8, ss. 60 (1) (3), 61 (2); 50 & 51 Vict., c. 33, ss. 18, 20; 48 & 49 Vict., c. 73, ss. 2, 4; 44 & 45 Vict., c. 41, s. 2 (7); 44 & 45 Vict., c. 12, ss. 33, 35, 36.

The judgment of the Court was delivered by Palles, L.C.B.: This appeal involves the principle of the calculation of the value for estate duty purposes of a holding upon the death of a former tenant who had purchased the fee simple under the Land Purchase Acts, but the purchase money of which had not been wholly paid off at his death. All the material facts are admitted. William Cookman died on November 19, 1911, possessed *inter alia* of certain lands in the county of Wexford which he formerly held as tenant, but which he had purchased under our Land Purchase Acts. To effect this purchase the State advanced a sum of £1,610, in consideration of which the lands were charged under these Acts with an annuity of £52 6s. 6d. for a long term of years, payable to the Irish Land Commission as a trustee for the Crown. This annuity was under these Acts redeemable; the redemption value at Mr. Cookman's death was £1,557 17s. 7d. The value of the fee simple of the lands discharged from this annuity was £1,917. The lands, subject to the annuity, if sold in the open market at the time of Mr. Cookman's death, would have fetched £800. The Commissioners contend here that the principal value of the lands for estate duty purposes is £2,357 17s. 7d. (being the aggregate of this £800 and the £1,557 17s. 7d., the redemption price of the annuity), from which aggregate they admit is to be deducted (under Section 7 of the Finance Act, 1894) the value of the charge £1,557 17s. 7d., leaving the net amount assessable to duty at £800; and by amendment allowed at the hearing they claim alternatively that the principal value is the £800 as the market value of the deceased's interest which passed at his death. On the other hand, the respondent here, the

executor of the deceased, submits that the value is to be ascertained by deducting from the £1,917 the value of the unincumbered fee simple the sum of £1,557 17s. 7d., the redemption price of the annuity, which would reduce the assessable value to £359 2s. 5d. The judgment of the Referee was that the respondents' mode of application was right in principle, and we have to decide whether it is so or not, and if not which of the two modes insisted on by the Commissioners is the right principle for the valuation of such an interest in lands. The material enquiry is *what* property in these lands passed upon the death of Mr. Cookman. Undoubtedly the unencumbered fee simple did not pass. The annuity vested in the Land Commission remained vested in them notwithstanding Mr. Cookman's death in identically the same state as it had been vested in them on the day before the death. He never had any greater estate than the fee subject to the annuity. The annuity appears to have been a statutable reservation to the Crown and to be practically of the same character during its existence as a Crown rent. It was from its creation vested in a trustee for the Crown. At no time was it assessable to estate duty, and in my opinion that which passed on the death was the farm of land with all the statutory privileges and subject to the statutory liabilities attaching thereto. In other words, the fee simple subject to the annuity; and if that be so it is on the principal value of that estate, subject to that charge ascertained as in the Act provided, that the duty is to be assessed. Whatever may be the nature of the unencumbered fee simple, whatever may be the value of the charges on that fee simple prior to the estate of Cookman therein, they are of no importance save as elements in ascertaining the value of the thing that passed so far, if at all, as under the provisions of the Act they can be taken into consideration for that purpose. Now, which of these provisions may be taken into consideration for that purpose? This brings us to Section 7 of the Act of 1894 and Finance Act, 1910, 10 Edw. VII., c. 8, Section 60. Mr. Henry relied on Section 7 (1) of the Act of 1894. [He reads subsection.]

Now, it is clear that the thing out of which these allowances are to be made is the value of the property which has passed or has been deemed to pass on the death. This is Lord Halsbury's opinion in *Cowley's case* (1899), A.C., 198, at p. 205.

If what passes is a leasehold interest in land it cannot be pretended that the leasehold interest only being valued for estate duty purposes an allowance is to be made under this section for the value of the head rent. To do so would be practically to allow such value twice over, it having been already taken into consideration in reducing the value of the land, and for that reason I hold that neither an ordinary head rent nor the annuity in the present case is an incumbrance within the meaning of Section 7. There is, however, one provision of 1894, Section 7, which is germane to the present case. Section 7 (5) enacts [he reads subsection]. This subsection, re-enacted by the Finance Act, 1910, is, in my opinion, that which, as was rightly argued by the Solicitor-General, rules the present case, and it is on this subsection that the alternative estimate of the Commissioners of Inland Revenue—that relied on by the amendment—is based.

I am therefore of opinion that the contention of the respondents and the first contention of the Commissioners of Inland Revenue, to the extent, if at all, that it varies from their alternative contention, are both wrong, and that the Referee ought to have fixed the principal value of that which passed at £800. I desire to add that in my opinion the argument for the respondents has been based upon a capital fallacy as to the real interest acquired by a tenant purchasing under the Land Purchase Acts. That interest is not the value of the fee simple after deducting simply the amount of the Land Commissioners' advance. In addition the purchaser acquired the right that the advance should be repaid by instalments payable over a long series of years, such instalments being calculated at a rate of interest much lower than that at which such purchaser or any one of the public could obtain the same. This right, which may be taken to be an addition to the Land Commission annuity to be continued so long as the annuity continued and to be of an amount equal to the difference between the actual annuity and the annuity for the same period of years for which an ordinary banker or money-lender would have made the advance, constitutes an interest in the land and is a free gift by the nation to the purchaser. As an annuity, however, this interest would cease on the redemption by the purchaser of the Land Commission annuity. Such redemption is in fact a renunciation by the purchaser of continuing to retain the loan on the Government terms and a consequent loss of the advantage so far as at the time of the redemption that advantage was prospective. The Referee's calculation deducts from the value of the fee simple the redemption price of the annuity. This, however, is too great a reduction, and consequently leaves the difference (taken to represent the capital value of the lands assessable to duty) too small. The reduction is too great because it includes in it part of the nation's free gift to the purchaser.

This difference would be very small were the annuity one which had but a few years to run; but in a case like the present it would be very large. I do not say that it would wholly account for the difference in the present case between the sums arrived at by the two different calculations—£800 and £359 2s. 5d.—because elements such as supply and demand affect market value, which is represented by the £800.

We allow the appeal, and declare the capital value of the lands for the purpose of estate duty to be £800. Each party must abide their own costs of this appeal. The contention of the Commissioners upon which they succeed was not put forward until the amendment was made during the present hearing. The case of each party, as put before the Referee, was unsustainable.

For the appellants: The Attorney-General, the Solicitor-General, and Rearden (instructed by the Solicitor for the Inland Revenue.)

For the respondent: D. S. Henry, K.C., Wylie, K.C., and Horan (instructed by John A. Synnott & Co., Solicitors).

[KING'S BENCH DIVISION.]

INLAND REVENUE COMMISSIONERS *v.* WHIDBORNE'S
EXECUTORS.

[JANUARY 27TH : FEBRUARY 5TH, 1915.]

Revenue—Assessable Site Value—Deductions—“Value directly attributable to Works executed, or Expenditure of a Capital Nature”—“Value directly attributable to the Appropriation of any Land for the purpose of Streets,” &c.—Appropriation of Land and Construction of Roads thereon on Building Estate—Claim for Deduction—Practice—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 25 (4) (b) & (c).

The assessable site value of land for the purposes of the Finance (1909-10) Act, 1910, means “the total value after deducting— . . . (b) “Any part of the total value which is . . . directly attributable to works “extended, or expenditure of a capital nature . . . incurred . . . by . . . “any person interested in the land for the purpose of improving the value of “the land as building land, . . . and (c) Any part of the total value “which is . . . directly attributable to the appropriation of any land . . . “by any person interested in the land for the purpose of streets. . . .”

Held, that in the case of a building estate, the value attributable under (c) does not refer exclusively to the value attributable to the appropriation of land outside the estate, but includes the value attributable to the appropriation of land to roads on the estate.

Held, also, that where the land has been appropriated and the roads made up, and a landowner claims under both (b) and (c), the deduction may be in one sum without specifying the amount under each separately, but that a specific claim must be made under each clause if a case under each is to be put forward. If in doubt under which to claim, the landowner may claim under each alternatively.

Held, further, that the part of the total value attributable under (c) is not the part at the time of the dedication, but the part of the total value—that is, the amount after certain deductions, which it would have fetched in the open market—attributable under (c) in the same market.

Appeal by way of petition from a decision of one of the panel of referees under the Finance (1909-10) Act, 1910.

The appellants were the executors of the Rev. George Ferris Whidborne, deceased, who claimed certain deductions from total value in respect of two houses, 12 and 18, Strickland Street, Deptford, for the purpose of ascertaining assessable site value under Section 25 (4) (b) and (c) of the Finance

(1909-10) Act, 1910. The two houses were admitted to be exactly similar, and for the purposes of the case no distinction was drawn between them. The executors, on November 6, 1913, entered the following particulars in Form 7 ("Claim for site value deductions"): "(5) *Portion of the total value directly attributable to—(a) Works executed—Extent of land, 1,350 square feet.*" "Date of works executed—1859 and subsequent years." "By whom executed—The deceased and others, owners in fee and ground lessees." "Particulars of works—St. John's Road, Ravensbourne Road, Elverson Road, Batsford Street, sewers under Ravensbourne Road, and Strickland Street and sewers on the estate." "Amount expended on works—£8,000." "Value directly attributable thereto—see covering letter." "(b) Expenditure of a capital nature filled in as above." "(6) *Portion of the total value directly attributable to the appropriation of any land or to the gift of any land for streets, roads, &c.*—particulars of appropriation or gift—Appropriation of land to the above roads." "Value directly attributable thereto—see covering letter." This form was accompanied by a covering letter (referred to in the column thereof entitled "Value directly attributable thereto") in which the respondents stated that they were advised that it was practically impossible to split up the claims under Section 25 (4) (b) and (c). They claimed in respect of each house, that £45 of the total value was directly attributable to the matters in respect of which the claim was made. The appellants admitted the claim to a deduction under Clause (b), but said that the extent of it was £16 only for each house, and rejected the claim for the deduction under Clause (c). The respondents appealed to a Referee who, on April 28, 1914, awarded that "an allowance ought to be made in respect of works executed, capital expenditure, appropriation of land for streets, roads, &c., under Section 25 (4) (b) and (c), and that the amount of such deductions should be £38 10s." There was a claim also under Clause (c), but this the Referee decided in the appellants' favour. The appellants appealed in March, 1914, to Scrutton, J., when it was agreed that the proceedings should start *de novo* with the delivery of Form 7 (*supra*).

The facts proved and admitted before the Referee were as follows: Strickland Street is part of the Lucas estate, which was developed for building purposes from about 1850 onwards. Plans, more especially an ordnance plan, was before the Referee showing the situation of the estate and the various stages of development, the streets, &c., in respect of which the claim was made, being coloured brown thereon. Of the £8,000 expended on these streets, &c., as claimed, £2,000 was spent by the owners, and £6,000 by the local authority after the taking over the roads, and charged by them to the frontagers under the Metropolis Management Act, 1855 (18 & 19 Vict., c. 120).

The gross value and the total value were £270 and £270 respectively, and the amount to be deducted under Section 25 (4) (a) of the Act of 1910, £180. The question was as to any further deductions under Section 25 (4) (b) and (c).

[FEBRUARY 5TH]

Rowlatt, J., read the following judgment: This is an appeal as to site value deductions in respect of two houses, 12 and 18, Strickland Street, in the parish of Deptford South. The same considerations affect both houses, and it is sufficient to speak only of one. They both appear marked upon the plan which was referred to as plan X, and are there shown to form part of a large estate, which I was told was laid out for building, and built upon during a period commencing about sixty years ago. The estate is traversed by numerous streets marked brown upon the plan. The owner claimed upon Form 7 a deduction in respect of value directly attributable to works executed and expenditure of a capital nature such as is referred to in Section 25 (4) (b) of the Finance (1909-10) Act, 1910, and also under Clause (c) of the same subsection for value directly attributable to the appropriation of land for the purpose of streets. The works and expenditure were on the streets coloured brown, and the land appropriated consisted of the sites of the same streets. No figure was given in the claim in respect of either item, but a covering letter was referred to, in which it was stated that one single deduction of a named amount would be claimed for the value attributable to the combined effect of the appropriation of the sites of the streets and the works and expenditure upon them. The Crown admits a deduction of £16 under Section 25 (4) (b), but says nothing is deductible under Clause (c). The owner claimed £45 under the two clauses together, and in his evidence dealt with the matter in the same way. The Referee has allowed £38 10s. under the two clauses without distinguishing the amount he allows under each. It was not disputed that the whole of the roads marked brown occupied sites given by the respondents or their predecessors, and the case further proceeded upon the footing that they had made the roads. It seems that in fact a great deal of money has been spent by the local authorities on the roads, but in this case it is not suggested that any part of the total value due to the existence of made roads was due to any other expenditure on them than that of the respondents.

The points in the case are: First, whether the deduction in respect of heads (b) and (c) of Section 25 (4) is to be disallowed because claimed and awarded in a single sum; and, if not, secondly, whether any deduction under Clause (c) can be supported in this case.

It seems to me clear that in making his claim the landowner must claim under (b) and (c) specifically, if he is going to put forward a case under both of them, and he must indicate his case under each. Of course he may claim only under one, and if he does so he must say which. But he may think himself entitled to a certain sum as a deduction and not be sure to which head it may be decided that it is attributable, or whether it will be attributed partly to one and partly to the other, and if so, in what proportions. Under those circumstances I cannot doubt that he would be entitled to say that he claims it all under (b), and, alternatively, all under (c). It seems to me that that is all he has done here, only he has been less artificial, because he has told the Revenue authorities exactly how he is going to put his case. To do justice to the contention of the Crown

in this respect, I do not think the Attorney-General intended to make the point as one of procedure merely. His real argument was that the combination of the deductions under the two clauses in one sum in fact masked the fallacy which he contended underlay the allowance of anything under Clause (c) at all. Now the substance of the argument was this: It was said that no value was added by the appropriation of soil to roads, because the value of a building estate before actual development depended upon the supposition that roads would be cut through it, and neither the actual pegging out of the sites of the roads nor the dedication of those sites made any difference to the value of the property; it only concentrated the value on the plots left between the roads. This is all perfectly true of the whole estate in the past as undivided; but the statute is dealing with the present plots, and the increase of value of each plot by reason of the concentration upon them collectively of the value of the whole estate before the roads were carved out of it is an increase of value, one would think, directly attributable to such carving out of the roads. If the plots only were offered for sale before the road was laid out, and without the vendor assuming the obligation to lay out the road, they would clearly not fetch the price that they would if he did assume such obligation. The difference is the added value due to the dedication of the site of the road, as distinguished from the further value added when the road is actually made up by the execution of works upon it. In truth the whole fallacy lies in putting out of sight the fact that what is to be valued is the plot after the road is made, and not a larger unit comprising the plot and the site of a future road. Suppose a field, valued as undivided at so much an acre, is hereafter divided into building plots with intersecting roads, and some of the plots are sold. On the sale an occasion for the collection of increment value duty arises as to each plot, and each must be valued. Apart from any general movement in the market the plots will have absorbed into themselves the value of the roads. The Attorney-General affirms this, and yet at the same time says that this added value will not be due to the appropriation of the rest of the land to roads. Apparently he would contend that the owner should pay increment value duty on this sum.

In my judgment this sum is exactly what Section 25 (4) (c), in conjunction with the final words of Section 2 (2) entitled the owner to deduct, and the right to do it is saved in Section 12. If it were not so, building estate development hereafter would be directly discouraged by taxation in a manner surely not consistent with the intention of the Act. I do not see any difficulty in applying Section 25 (4) (c) to cases like the present, and I do not appreciate how dealing with deductions under Clauses (b) and (c) in one sum leads to any injustice to the Crown, or perverts or obscures the issue in any way. Given the total value (which supposes the land bare) a person with adequate expert knowledge can quite well say, first, what the value of a plot of land would be if it had no road frontage; secondly, what the value would be with the frontage to a road site appropriated in a binding manner as a road, but on which no work has yet been done; and thirdly, what it is worth with the existing frontage to a finished road. The difference between the first and the second is deductible under Clause (c); the difference between the second and the third is deductible

under Clause (b). If the facts should call for the deduction of only one of these differences—that is, if the road is dedicated but unmade (which must be a common case), or if, though the road is made and was constructed by the owner of the plot, he did not provide the site of it (which would be a rare though a possible case)—then the two differences must be distinguished. Where, however, the owner has dedicated and made up the road, there seems no reason why the deductions allowable should not be calculated as one by direct comparison between the value with the made-up road and the value without any road or assurance of a road at all. Why should that difference be apportioned in such a case? I cannot see any reason for it.

Some further points were raised by the Solicitor-General. In the first place he said that land appropriated, upon cutting up an estate for building, for the purpose of forming streets or roads, between the plots, was not land appropriated for the purposes of streets or roads within Clause (c) of the subsection. Inasmuch, however, as that is the very commonest case of the appropriation of land to streets or roads, and a no clue is afforded by the statute to any narrower meaning, I am unable to see how I can say that this land is not within it. He then said that there was no evidence in support of the finding of the Referee, inasmuch as the witnesses for the owner had only deposed to a certain percentage of the value being attributed to the appropriation of the street site and the making up of the roadway. I have already expressed the opinion that, where both these elements exist, there is no reason why the effect of them on the value should not be calculated together, and, if that is so, it is immaterial whether you say that 50 per cent. must be deducted, or whether you say that of a total value of £90—the figure in this case—£45 is to be deducted for these reasons. But I rather understood the Solicitor-General to suggest that this way of stating the case shows that there was in truth no value directly attributable to the appropriation of sites for streets, and that it was only a surveyor's speculation, and in this connection he laid some stress upon the words "directly attributable." In one sense it is true that the evidence is a matter of speculation, because there never has and never will be in the market a plot of land in this estate surrounded by the houses on the other plots, but without the existing streets upon the estate. The whole of the elements of value which have to be disentangled under this section rest on hypothesis, including the total value from which the deductions have to be made. It seems to me that the step from the gross value to the total value presents more difficulties in a case like the present than the calculation of the portion of such total value which would not have existed had the plot of land supposed to be clear of its buildings been situated in the middle of the other houses without access by street. Whatever deductions the introduction of the word "direct" may have the effect of excluding, I do not think it can exclude the present deductions, if Clause (c) is to have any effect at all.

I further gathered that the Solicitor-General made some complaint as to the percentage form of stating the deduction, on the ground that the part of the value attributable to the street ought, as I understood him, to

have been ascertained once for all as at the time the street was appropriated, because otherwise, he said, the value was attributable, not to the appropriation, but to the growth and pressure of population. I need not enter into the vexed question as to how far value can exist at all without competition for the article to be valued, because it seems quite clear that the figure to be ascertained in the present case is to be "part of the total value," and the total value represents, subject to certain deductions (which distinguish it from the gross value), the value in the open market on April 30, 1909. The part of that value to be deducted must be the part attributable to the considerations in question in the same market.

For these reasons I am of opinion that the methods and principles adopted by the Referee were in accordance with the Act, and I was not asked to modify the figure he arrived at merely as a figure. In the result I dismiss the appeal with costs.—(84 L. J., 1202.)

[VALUATION APPEAL COURT, SCOTLAND.]

GLASS v. INLAND REVENUE.

[FEBRUARY 6TH, 1915.]

Provisional Valuation—Total Value—Site Value—Agricultural Value—Special Purchaser—Provisional Order conferring Power on Water Commissioners to acquire Lands by Agreement prior to April 30, 1909—Enhanced Value due to probable Acquisition by Water Commissioners—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), s. 25 (1) (3) (4).

Clay and Buchanan v. Commissioners of Inland Revenue ([1914], 3 K.B., 466, *ante*, p. 336) approved and followed.

This was an appeal against the provisional valuation of the farm of Easter and Wester Feal, in the parish of Portmoak and county of Kinross. The following were the figures in the provisional valuation, viz.: Gross value, £4,354; full site value, £3,473; total value, £3,333; assessable site value, £2,452; agricultural value, £2,983. On appeal, the Referee (G. H. A. Connor, F.S.I.), without any evidence having been led before him, issued the following award on July 24, 1914:—

"Having visited and inspected the property, and heard parties on the appeal, I am of opinion, and decide, that the different values of the

“ property as at April 30, 1909, in terms of the Finance (1909-10) Act, 1910, are as follows :—

| | £ |
|---|-------|
| “ Original gross value | 4,359 |
| “ Original full site value | 3,684 |
| “ Original total value | 3,379 |
| “ Original assessable site value | 2,704 |

“ It is contended, on behalf of the appellant, that the total value of the property, which is the subject of this appeal, as at April 30, 1909, is £5,000, being the price at which the property was subsequently sold to the Kirkcaldy and Dysart Waterworks Commissioners on October 16, 1911. I am of opinion that this contention is not well founded, and I hold that the total value of the property at the former date is as stated above, viz., £3,379, and that the consideration on the subsequent sale cannot be taken as a true standard of value, and, under Section 25 (1) and (3) of the Act, is in excess of the value that the property might be expected to realise if sold at the time in the open market by a willing seller in its then condition.”

The Referee issued a separate award, in which he decided that the value of the land for agricultural purposes was £3,079.

On August 22, 1913, the appellant appealed to the Valuation Appeal Court. On January 27, 1914, the Court formulated certain questions which were transmitted to the Referee for his reply. The questions by the Court, and answers by the Referee, were as follows, viz. :—

Question 1. Did the Referee have in view that the Kirkcaldy, &c., Water Order, 1908, had passed some months prior to April 30, 1909?

Answer 1. The Referee had in view that the Kirkcaldy and Dysart Water Order, 1908, was passed prior to April 30, 1909.

Q. 2. Was the Farm of Easter and Wester Feal within the drainage area of the Kirkcaldy Waterworks Commission as defined by that Order?

A. 2. The said farm was presumably within the drainage area though not expressly defined in that Order.

Q. 3. In arriving at the total value and assessable site value of said lands, did the Referee have regard to it, as an item for his consideration in determining these values, that the Commissioners might find it necessary or desirable to acquire said lands in terms of said Order?

A. 3. In arriving at the total value and assessable site value of said lands, the Referee did regard it as an item for his consideration in determining these values that the Commissioners might find it necessary or desirable to acquire said lands by agreement in terms of said Order.

Q. 4. Did the Referee consider, in view of the passing of the said Order and of the alternatives open to the Water Commissioners,

whether the prospect of the Commissioners requiring the said lands added to the normal value of said lands?

A. 4. The Referee considered this point carefully, and came to the conclusion that the possibility of the Water Commissioners acquiring said lands did not add to the normal value nor to the market value as defined in Section 25 (1) of the Finance (1909-10) Act, 1910.

Q. 5. If the Referee considered that the possibility of the Commissioners requiring said lands added to the normal value of said lands as at April 30, 1909, what portion of the value he has put upon said lands is attributable to this element?

A. 5. The reply to this question is covered by reply to question No. 4.

Q. 6. If in point of fact the Commissioners in 1911 gave £5,000 for said lands, how does the Referee explain the difference between the site value of said lands as ascertained by him and the site value as ascertained on the basis of said price?

A. 6. The difference between the site value of said lands as ascertained by the Referee, and the site value as ascertained on the basis of the price paid, is accounted for by the fact that the Referee considers the price paid by the Water Commissioners in 1911, viz., £5,000, was in excess of what in his opinion the said lands would have been reasonably expected to realise if sold in the open market as at April 30, 1909 (*vide* also Section 25 (1) and (2) of the Finance (1909-10) Act, 1910). It is scarcely necessary for the Referee to point out in this connection that the Commissioners did not purchase in the open market but by private bargain. Had they purchased in the open market, by auction for instance, they would have been in the position of purchasing these lands at an enhanced bid of a few pounds over another bidder.

Q. 7. Had any change occurred between April 30, 1909, and October 16, 1911, which affected the value of said lands to their proprietor, Mr. Robert Glass?

A. 7. In the opinion of the Referee no change had occurred between April 30, 1909, and October 16, 1911, to affect the value of said lands to their proprietor, Mr. Robert Glass.

Agricultural Valuation.

Q. The Referee will explain how he arrived at the sum of £3,079 as the agricultural value under the Act of the lands of Easter and Wester Feal?

A. The agricultural value of £3,079 is arrived at in this instance by deducting the value of the shootings from the total value.

Thereafter the case was again heard on March 7, 1914, when the appellant argued: The Commissioners had obtained no compulsory powers in the Order of 1908; but pressure was being put on them to acquire the

lands in the interest of public health ; consequently the proprietor was in a position to fix his own price. The lands had thus an exceptional value, and the appellant was prepared to show that they had acquired that value before April 30, 1909. Reference was made to the cases of *In re Gough and Aspatiria, Silloth, and District Joint Water Board* (1904), 1 K.B., 417 ; *In re Lucas and Chesterfield Gas and Water Board* (1909), 1 K.B., 16 ; *Inland Revenue v. Walker*, 1907, S. C., 719.

The respondents argued that the statute was specially designed to catch windfalls, such as the present, and it postulated a willing seller, not a proprietor holding up his land for an extortionate price. The price subsequently obtained was only one of the elements in estimating its value as at April 30, 1909. The value for estate duty purposes at June, 1909, adjusted at £3,300, could not be gone back upon.

On March 20, 1913, the Court recalled *in hoc statu* the decision of the Referee, and remitted to him to allow the appellant to lead evidence *inter alia* on the probability of the Waterworks Commissioners of Kirkcaldy and Dysart exercising the authority to acquire lands within their drainage area by agreement which they obtained by Section 4 of the Kirkcaldy and Dysart Waterworks Order, 1908, and to re-value the property in the light of the evidence adduced. At the same time the Judges pronounced the following opinions :—

Lord Johnston : The Referee has had to value the farms of Easter and Wester Feal, in the county of Kinross, as at the passing of the Finance (1909-10) Act, 1910 (April 30, 1909), in order to fix their original assessable site value. He has found the original total value to be £3,379, from which deducting for value of buildings, &c., £675, gives an original assessable site value of £2,704.

The appellant, who is the owner of Easter and Wester Feal, maintains that the original total value was £5,000, which would have given, deducting value of buildings, &c., £675, an original assessable site value of £4,325. He supports this contention by the fact that in October, 1911, the lands actually sold for £5,000, and by the allegation that nothing had occurred between April 30, 1909, and October, 1911, to affect the value of the lands.

The facts are . . . [his Lordship narrated the facts].

Had the appellant continued to maintain his contention that the original total value must be ascertained on the basis of the sale for £5,000 in October, 1911, I could not have sustained that contention. But at the discussion before this Court the appellant took lower ground, and contented himself with maintaining that the subjects in question had in 1908-1909, and particularly at April 30, 1909, an element of value which the Referee had refused to take into consideration. When this was made clear the learned Solicitor-General practically admitted that he could not support the Referee's determination. The case is a very exceptional one, and quite novel, and I am not surprised that the Referee has fallen somewhat into error. But in justice to the appellant, I am satisfied that the case must be sent back to the Referee to inform himself of certain matters which he has considered unnecessary or irrelevant, and to revalue the subjects in the light of these facts.

The appellant, when the case was first before us, asked that he might be allowed certain proof which he thought necessary in order to inform us of facts which the Referee ought to have had before him, and which whoever is to value the subjects in question in terms of the Act must have before them, whether this Court, the Referee, or someone else. We thought that before we could dispose of the question thus disclosed we should know rather more of what was in the mind of the Referee, and accordingly certain questions were addressed to him to be answered for the information of the Court. We have been much advantaged by the Referee's clear and concise answers to our questions. I shall only refer to three of these questions and the answers. [His Lordship read Questions 3, 4 and 6 *supra* with the answers by the Referee.]

From these answers it appears, I think, that the Referee has misconceived the situation presented to him. He is to value the property at the value it might be expected to realise at April 30, 1909, if sold (1) "in the open market," (2) "by a willing seller," and (3) "in its then condition"—Act, Section 25 (1). The first half of Answer 6 is quite sound. It is in the second part of that answer that I think the Referee has misled himself.

The word "normal" was used in the question with a definite intention, viz., to indicate the value of the land, assuming that there were no exceptional surrounding circumstances; in point of fact, in this case such value would have been confined to pure agricultural or more probably pastoral value. But the term "normal" was used as in contradistinction to "market value in its then condition."

The present question must, I think, be distinguished from cases of compensation where land is taken under compulsory powers. In the latter case it is recognised as a guiding rule that the value to the buyer is not the *de quo*, but the value to the seller, and that, therefore, the seller does not get a fortuitous advantage from the passing of the Act conferring the powers. But though the seller cannot say, "Your Act ties you, the buyer, to take my lands, or abandon your scheme, and therefore the value is its value to you, the buyer, your necessity is my opportunity," it is at the same time recognised as a further rule that the passing of the Act conferring the powers is not to deprive the seller of any adventitious advantages which its position, its configuration, existing surroundings, and similar considerations give to his property. Two instructive cases on this subject in England were quoted to us—*Gough's case* ([1904], 1 K.B., 417), and *Lucas's case* ([1909], 1 K.B., 16). These illustrate the distinction between the possibility which attaches to certain lands prior to and independently of their being scheduled to be taken under compulsory powers, and the realised possibility, as I think it has been called, which attaches to the same lands after the empowering Act is passed.

Now the present case is, for two reasons, not *in pari casu* with one where lands are taken under compulsory powers. In the first case there are no compulsory powers. The Water Commissioners have avoided the expense and the difficulties which they must have encountered had they gone to Parliament for compulsory powers, and they have, as a counter to this advantage, placed themselves in the position of having to bargain for

what lands they require with those who are able fairly to gauge the Commissioners' necessity and entitled to make use of their knowledge. And, in the second place, the problem for the Referee under the statute of 1910 is a totally different one from that presented to the arbiter under a compulsory taking. What the former has to do is to estimate and fix the value in the open market of the lands in question at a specified date, viz., April 30, 1909, in order that this value may become the datum for ascertaining for the purpose of taxation the increase, if any, in value on subsequent transactions. If there is a cause operating on the value at the date of the original valuation, and which continues to operate in an increased degree at the date of the first subsequent transaction, it would be manifestly unfair to take it into consideration in the latter case and not in the former. So it seems to me that if the potentiality at the date of the original valuation has become not merely an increased potentiality, but has ripened into an actuality at the date of the subsequent transaction, it would be manifestly unfair to exclude it from consideration in the original valuation, when automatically it enters into and even dominates the actual value on the subsequent transaction. Let me take the case in question. Apart from the Provisional Order it had, by 1908, and *a fortiori* after the Commissioners had obtained their Provisional Order, become common knowledge of the district that the Commissioners might sooner or later require to obtain possession of the lands of Feal by agreement, or else would have to obtain compulsory powers, or hit upon some scheme costing money to obviate the necessity of acquiring Feal. Suppose that they had made no move, but that after the lapse of five years it came to be understood that they must immediately acquire the lands, I cannot doubt that in that case, had they then been revaluing on the death of the proprietor, the Inland Revenue authorities would have been astute to find an increment of value in the increased potentiality attaching to the lands. Why, then, should the original, though lesser, potentiality not be valued at the earlier date of 1909? I can see no reason whatever. And no difference is occasioned by the fact that original potentiality is, in the case in question, brought into comparison, not merely with an enhanced potentiality, but with a realised possibility.

The Referee has in theory regarded the possibility attaching to the lands in 1909 as something affecting the value. In practice he has given to it no effect, but has admittedly stuck to agricultural value because apparently he thinks that if the subjects had been sold in open market the Commissioners would have had it all their own way, and would have had no competitor except, possibly, at agricultural value. I am unable to agree with him. The same might have been said with equal force in all cases of statutory valuation for rating or otherwise. They all, perforce, involve something of the hypothetical and unreal, and none more than valuations under the Finance Act, 1910. In order to do justice to the appellant, I think that the Referee must assume a little of the hypothetical spirit of the Act, and if he postulates an open market and a willing seller where there are none, must also allow for the competing buyer where the circumstances reasonably admit of the hypothesis. He would do so fast enough if the subject had any potential feuing value, though no hypo-

thetical feuar was in sight. I think the Referee is mistaken in assuming that open market necessarily means sale by auction. A sale takes place in open market, if the subject is put on the market, and the best offer taken, however made. But he is further, I think, mistaken, in that he has forgotten that where a public body is expected in the near future to require certain property there are generally found, and must be assumed to be, people who are prepared to trade on that fact and prepared to bid up to a point to which they think they may safely go and leave themselves a chance of profit in turning over the property to the Commissioners. That point will doubtless be below the value to the public body, but where, as here, the public body has no compulsory powers, all depends upon how near a certainty it is that the Commissioners must acquire. In fact, if the acquisition by the public body has become a practical certainty, the margin depends upon what it would cost the public body to obtain compulsory powers or to adopt some other course of obtaining their end, if such is feasible. The phrase "willing seller" is not to receive a restricted meaning. He is only hypothetically willing if he gets the advantage of all surrounding circumstances, and this is implied in the further expression "in its then condition."

I am clear, therefore, that the Referee instead of assuming that the Kirkcaldy Commissioners would be the sole offerers for the property if placed on the market, or the sole bidders at the hypothetical auction, has got to assume that there will be competition, the weight of which will depend on the prospect of the Commissioners actually requiring the lands. For if they do, the Commissioners must take care that they prevail in that competition. The problem for a valuator is therefore not an easy one, but it is one of a class with which valuers are constantly being faced. In many respects it is much akin to a case of land adjoining a large work, or to a case of prospective feuing value, as to which I have never found valuers make any difficulty, though I have often found them arrive at very different results. I have no doubt the Referee here will apply himself to the question, as it will now be explained to him, with the conspicuous fairness which is manifest in his explanation of the course which he himself formerly took, and with the ability he always displays.

But there is still another point which requires consideration. Before the Referee the appellant asked a proof of a number of matters which he considered had an important bearing on the question which he had to determine. Acting on instructions* the Referee refused to allow proof. These instructions, I think your Lordships agree with me, have had a most unfortunate result. Fortunately they are not binding on this Court. The appellant was entitled to bring these facts before the Referee, and a great deal of the time of the Court has been wasted and expense to the parties caused in consequence of their not being brought before him, and through him before the Court.

* It is understood that Referees in Scotland were advised by the Reference Committee for Scotland that the proceedings before them were to be regarded as consultations, and that, unless in very exceptional circumstances, a Referee should not allow evidence, especially skilled evidence, to be led before him.

When the case first came before the Court the appellant craved leave to lead evidence on four points as follows :—

- (1) The circumstances under which the Waterworks Commissioners of Kirkcaldy and Dysart obtained authority by Section 4 of the Kirkcaldy and Dysart Waterworks Order, 1908, to acquire by agreement any lands lying within their drainage area ;
- (2) The advantages to be derived by the said Commissioners from the acquisition under such authority of the farm of Easter and Wester Feal ;
- (3) The value of such advantages to the said Commissioners ; and
- (4) The probability of such authority being exercised by the said Commissioners.

After the Referee had been communicated with by the Court, the appellant tabled a minute, Print D, in which he specifically condescended on the circumstances, which he was prepared to prove, in support of the first of these heads, and the respondents found it expedient to tender an unqualified admission of the whole of these facts. Proof, therefore, on head (1) above is no longer necessary. It remains to consider the other three heads. I do not think that we can exclude proof on any of them. I think that such proof is necessary to secure that the individual appellant gets justice in this revenue proceeding. These matters bear materially upon the valuation which the Referee has got to make, but they are not that valuation itself. I therefore think that we must authorise and instruct the Referee to take further proof. I should have been inclined to limit a proof to these heads. But I understand that your Lordships think that the allowance had better be general, relying on the parties that they will use the opportunity with discretion, and in this I readily acquiesce. The Referee will take the proof under no restriction. He takes it under the authority of this Court. But it must be understood that the case is an exceptional case.

Lord Salvesen and Lord Cullen gave judgments concurring.

The Referee took proof on June 29 and July 17, 1914, on the question of value. The principal witness for the appellant was Mr. Charles Brown, F.S.I., factor to the Marquis of Zetland. He stated that £5,000 was in his opinion a reasonable price for anyone to expect, as at April 30, 1909, that the Water Commissioners would be prepared to pay for Feal as soon as it came into the market. After making the necessary deductions for the probability of the sale not taking place for a few years, he arrived at a figure of £1,250 as a proper addition to the Referee's figure in arriving at the original total value.

On August 20, 1914, the Referee reported to the Court as follows :—

“ I am of opinion that the different values of the property as at April 30, 1909, in terms of the Finance (1909-10) Act, 1910, as stated in my decision, dated July 24, 1913, should remain. These are as follows :—

| | £ |
|--|-------|
| "Original gross value | 4,359 |
| "Original full site value | 3,684 |
| "Original total value | 3,379 |
| "Original assessable site value | 2,704 |

"*Note.*—There are one or two considerations which to my mind bear strongly on this case, and to which I think it is desirable shortly to advert.

"The farm of Feal had been in grass for twenty to thirty years, and was so at April 30, 1909, and at that date grazed by sheep only. I am of opinion that the farm was only suitable as a grazing subject, and this fact was strongly borne out in evidence. This being so, there would appear to a valuer, valuing this farm at April 30, 1909, but little probability of the Commissioners finding it necessary to purchase in order to secure the purity of the water.

"Again, there was no complaint made by the Local Government Board after 1908, the date when the farms of Holl and Drumain were purchased by the Water Commissioners, showing that they (the Local Government Board) were satisfied with the steps that had been taken.

"The farm of Feal is not expressly mentioned, as were Holl and Drumain, in the Kirkcaldy and Dysart Waterworks Order, 1908, although, of course, this farm forms part of the drainage area included in the Order. The cause referred to in the opinions of the Court operating on the 'normal' or market value is, in my opinion, one of such a minor degree as at April 30, 1909, that a valuer in practice would only place a nominal sum on the value pertaining to this outside probability, and in this instance I feel I am bound to exercise my own judgment.

"The utmost I could add to my original valuation would be one-half year's purchase of the net rental, and in consequence of this sum being so small I am of opinion that it is not necessary to alter my figures, unless ordered by the Court to do so."

The case was again heard by the Court on December 18 and 19, 1914.

For the appellant it was argued that the Referee had failed to estimate elements of value to which his attention had been directed by the previous judgment. The price obtained was fair and reasonable in the circumstances, and, judging by purchases made by the Commissioners of necessary ground in the vicinity, it was not excessive. It must be assumed that speculative purchasers would have been prepared to bid a price in excess of the agricultural value. The present case was *a fortiori* of *Inland Revenue v. Clay and Buchanan* (1914), 3 K.B., 466, for here the prospective purchaser was a public authority compelled by a public duty.

For the respondents it was argued that the Referee had considered the circumstances to which his attention was directed, and he had come to the conclusion that his figures should not be altered. The Court should not interfere with the Referee's findings unless he had found something clearly unreasonable on the evidence or had gone wrong on a question of law. There was nothing to show that he had erred on either of these grounds.

His opinion as to value was supported by the valuation made for estate duty purposes upon the death of Mr. Glass.

The Court *recalled* the decision of the Referee, and *found* that the original total value of the farm of Easter and Wester Feal was £4,629, and that the original assessable site value was £3,954.

Lord Johnston (after reciting the facts) said: The provisional valuation was made on October 31, 1912, and, disregarding altogether the price obtained just a year before, as was quite right, put the original total value at £3,333. This the Referee raised to £3,379 on his own separate calculation, but on the same footing. This figure, after having considered the instructions conveyed to him in our interlocutor and relative opinions, the Referee finds himself unable to alter. He considers that the farm of Feal could at April 30, 1909, only be regarded in the market as a pastoral subject, worth the price which he has put on them, and that had the Commissioners wanted them they need only have given an extra bid of a few pounds to secure them.

I do not propose to go over the ground covered by my opinion already expressed in sending back the case to Mr. Connor. Mr. Connor is unable to conceive in a case of this sort the possibility of anyone coming forward to force the hand of the Commissioners. I can conceive such a thing very possible, and I find that three judges in the English Court of Appeal in the case of the *Inland Revenue Commissioners v. Clay and Buchanan* ([1914], 3 K.B., 466), have expressed themselves to the same effect. The English case to which I refer occurred shortly after our judgment of March 20, 1914, and its circumstances are so closely analogous to those of the present case that it forms a direct authority. These circumstances may be more briefly stated than those with which we have to deal. [His Lordship stated the facts of that case.]

As far as I can see, the only difference between *Clay's* case ([1914], 1 K.B., 339) and the present is that prior to the passing of the Finance Act, 1910, Mrs. Buchanan had had an actual proposal from Clay and others to purchase at a price of £850, being admittedly £100 over what I have formerly ventured to call the normal market value; whereas in the present case no overture had been actually made by the Water Commissioners to Mr. Glass. But I think that, when the circumstances of the present case are considered, this makes no real difference. We have the history of the Water Commissioners' position from 1904 onwards now clearly explained, and we must take it that every item of that history was not only well known to Mr. Glass but was public property. And we have a still more important circumstance, that in the end of 1908 the Water Commissioners had placed their position before the public so clearly in the Provisional Order which they obtained at the end of that year, as the result of the pressure which, during the previous four years, had been put upon them. In my former opinion I drew attention to a point which I think has a material bearing on the present case, viz., that to avoid the expense and difficulties of obtaining compulsory powers the Water Commissioners elected to obtain a Provisional Order without compulsory powers, a course which, while it entirely showed their hand to the public, merely gave them the means in the form of borrowing powers, &c., to

acquire by private agreement. It must be assumed that the Commissioners in taking that course weighed the fact that they would have to bargain for any properties that they required, against the expense which they would have been put to had they sought compulsory powers, and that, though they knew that they would have to pay beyond the ordinary market price for the lands they might require, treated as purely agricultural or pastoral subjects, they thought that they would do better in that way than by incurring the expense of obtaining, possibly against opposition, compulsory powers, and the risks of an arbitration under the Lands Clauses Act. But the fact to which I have just adverted had a material bearing upon the value of Mr. Glass's property as soon as the Provisional Order had been obtained.

I have read with attention the judgment of Scrutton, J., in *Clay's* case, and those of the Court of Appeal ([1914], 3 K.B., 466), and they all so exactly express the views which I think are applicable to the case before us, that I prefer to adopt their reasoning rather than go over the ground which I have largely travelled in the opinion already given in the present case. I should like, however, to point out that in the passage from my former opinion which is quoted by Pickford, L.J., there is towards the end of the passage, as printed at p. 479, an omission of some words which are necessary to make my meaning intelligible.

The conclusion at which I have arrived is that the Referee in the present case has held as his guiding rule the contention which the learned Solicitor-General in *Clay's* case ineffectually put forward—that the price actually obtained between the date of the Act coming into operation and the provisional valuation, though it does not fix the value at the latter date, can be, and must be, taken into consideration; that the statute in using the term “sold at the time in open market by a willing seller in its ‘then condition,’” does not confine the attention of the valuer to sale by auction only, and does not mean by “willing seller” a person willing to sell without reserve for any price that he can obtain; but one who is willing to sell, making the most, in the circumstances, of his property, and that the most, in the circumstances, he can make of his property cannot be determined without consideration of the circumstances, and, in particular, cannot be ascertained while excluding the consideration of the known wants of a probable purchaser.

The inability of the Referee to appreciate fully the explanation endeavoured to be given to him of the matter re-referred to him, and his adherence to his original opinion, render it, I think, impossible that we should send the case back again to him, either in courtesy or as a practical means of attaining to a final judgment in the case, and I think, therefore, however averse I am to do so, that we must take the matter of value into our own hands. However, I am somewhat reconciled to doing so by the consideration that we are not called on to fix an agricultural or pastoral value, or even a feuing value, actual or prospective, but to fix what, in any view, must be a somewhat empirical value, viz., what is to be attributed to the probability of the Water Commissioners, in the circumstances desiring to acquire the property, and what figure, in a friendly negotiation would they be expecting to pay for it.

His Lordship made a brief review of the evidence, and continued :—

The one argument which the Inland Revenue have is that after Mr. Glass's death his representatives returned the property for estate duty at a value very much the same as that which the Referee has put upon it. I do not, however, place much weight upon this. It is perfectly well known that family agents in such circumstances place a value on property as low as they reasonably can, and after excluding any such incidental matters as we have to consider here, and that the Inland Revenue take a liberal view of the situation.

Taking everything into account, I think that the sum arrived at by Mr. Brown, £1,250, is a fair sum to add to Mr. Connor's total assessable site value, and the respondents have not led any counter-evidence. For what it is worth, I may add that the sum I myself arrived at, regarding the matter as a jury question, was very little below Mr. Brown's figure.

The expense which this case has involved is to be regretted. It has been increased by the limitation sought to be imposed on referees; but for it the appellant is not responsible, and accordingly he is entitled to have his full expenses against the Crown. Lord Salvesen issued a concurring judgment. Lord Cullen dissented. In his view the original total value was £3,400, representing the addition of the Commissioners' "enhanced bid" to the total value of £3,379, determined by the Referee.—([1915], S. C., 449; 52 S. L. R., 414.)

[COURT OF APPEAL.]

FORAN .. ATTORNEY-GENERAL.

[FEBRUARY 17TH, 18TH, AND MARCH 5TH, 1915.]

Revenue—Increment Value Duty—Unworked Minerals—Value—Form 4—Estimate unreturned—Right to make Separate Return—Irregularity of Notice—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 2 (3), 23 (1) (2) (4), & 26.

Held, that the Commissioners were not entitled to treat the return made by the owners as the return referred to in Section 23 (2), of the Finance (1909-10) Act, 1910; and that the owners were entitled to have a provisional valuation of their unworked minerals treated as a separate parcel of land.

Decision of Warrington, J. (111 L. T. R., 978) reversed, for which see page 497.

[CHANCERY DIVISION.]

[JULY 23RD AND 30TH, 1914.]

Revenue—Increment Value Duty—Unworked Minerals—Form 4—Value of Minerals—No Estimate returned on Form—Need of Separate Return—Notice Irregular—Waiver—Substituted Capital Value—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8) ss. 2 (3), 23 (1) (2) (4), & 26.

Owners of land let to W. P., with a reservation to them of the minerals (which were in fact not comprised in any mining lease or being worked), received from the Commissioners of Inland Revenue on the September 12, 1910, a notice dated September 10, 1910, requiring them to make a return of particulars of the land on the accompanying form—which was Form 4—within thirty days of the date of the notice, the land being described on the form as let to W. P.

In Part 2 of the form, headed “Additional particulars which may be “given if desired,” was a space for the estimate of the capital value of unworked minerals. This space the owners left blank when they returned the form with the particulars in Part 1 filled in.

The land was valued, the original site value was determined, and the land (including the minerals) was subsequently sold at a price which left a considerable increment value.

The owners contended that the notice being irregular (less than thirty days being allowed by it), they were not bound by their return, and that the return was not a return with regard to the minerals, which should have had a separate return; and they claimed to deliver a fresh return as to the minerals, or to amend their return for the purpose of having a substituted capital value of the minerals.

Held, that although the notice was irregular, yet that the owners had waived the irregularity, and were bound by the return that they had made; that Form 4 applied to the minerals as well as to the land, and as no estimate of the value of the minerals had been given, they must, under the Finance (1909-10) Act, 1910, be treated as of no value; that the owners were not entitled to make a fresh return as to the minerals, or to amend their return for the purpose of having a substituted capital value, as the minerals having no value there was no value for which a capital value could be substituted.—(113 L. T. R., 23.)

[KING'S BENCH DIVISION IN IRELAND.]

COMMISSIONERS OF INLAND REVENUE v. LEMON.

[MAY 13TH, 1915.]

Revenue—Undeveloped Land Duty—Deductions allowed in estimating “Site Value”—Bargains with respect to “Site Value”—Finance (1909-10) Act, 1910, s. 16 (2) (b).

L., the owner of land which was the subject of a land development scheme, arranged with a corporation within whose boundary the land was that the corporation should take over a road, and make and keep same, on condition that L. should dedicate for the purpose of the road a margin 10 feet in width. Prior to the arrangement L. was liable for the upkeep of the road.

Held, that L. was entitled to be allowed the amount of the expenditure by the corporation as if L. had made such expenditure himself in fixing the assessable site value, and that the assessment for undeveloped land duty should be made accordingly.

This was an appeal by the Commissioners of Inland Revenue under Section 33 (4) of the Finance (1909-10) Act, 1910, from the decision of the Referee.

Mr. Lemon was on March 13, 1913, assessed by the Commissioners in respect of land at Hollywood Road, Belfast, for undeveloped land duty for the year 1909-10 under an assessment in the following terms: Area of lands, 16 acres 3 roods 27 poles; site value, £4,229; agricultural value of agricultural land, £566; land occupied with dwelling-house, £1,400; allowance to avoid charging fractions of a penny, £1; total deductions, £1,967; net value chargeable with duty, £2,262; undeveloped land duty, at $\frac{1}{2}d.$ in £. on the value in column (6) (*i.e.*, on £2,262), £4 14s. 3d.

Mr. Lemon appealed against the assessment on the grounds that no allowance had been made in respect of the widening, making, and completing by the Corporation of Belfast of the street known as Sydenham Avenue. By an agreement between Mr. Lemon and the corporation it was agreed that if Mr. Lemon granted the corporation sufficient ground to enable them to widen Sydenham Avenue to a width of 30 feet, the corporation would make, pave, and complete same. Mr. Lemon had given the necessary ground for the street, which had been completed by the corporation at a cost of £600. Mr. Lemon alleged he gained no advantage from the widening in the way of letting value, and claimed that he had paid the corporation, if not in money, at least in kind, by the grant of the additional land, and that he should be allowed the sum spent by the corporation under Section 16 (3).

The Referee, Mr. George Henson, gave his decision as follows:—

“The facts appear to be that in 1896 the road (Sydenham Avenue),

“ which was about 20 feet in width, was brought inside the Belfast borough boundary, but not adopted by the corporation, that is to say, that the owner remained responsible for its upkeep; and could be compelled by the corporation to keep it in repair. In the years 1909, 1910, communications were opened between the corporation and the owner, having in view the adoption of the road by the corporation, with the result that in 1910 the road was taken over by the corporation on the understanding that the owner was to give the corporation an average of 10 feet of his frontage for the purpose of widening the road and providing the necessary footpath. The length of the road involved was approximately 860 feet. The owner was also called upon to erect a new fence to replace the existing one bounding his property, which he did at a cost of £43. The road was widened and put in repair by the corporation, and a footpath made at a cost of £520. The estate was considerably improved by this work, and the public were also benefited by having a good thoroughfare between Hollywood Road and Belmont. It appears that the appellant should get some credit for his outlay, and also for the land he had to surrender to the corporation, over and above the benefit he received by having the road taken off his hands, and that he should be allowed £100 as his expenditure on the road under Section 16 (2) (b), such allowance to date from March 31, 1911. It appears that a scheme of development of this frontage, which included the widening of the road, was made as far back as 1896. No expenses to either party.”

The Commissioners appealed from this finding on the following grounds :—

- (1) That the owner or his predecessors in title had not, with a view to the land being developed, incurred any expenditure on roads within the meaning of Section 16 (2) (b) of the Finance (1909-1910) Act, 1910, and that the arrangement between said Archibald D. Lemon and the Corporation of Belfast was in truth and in fact an appropriation of land by the said Archibald D. Lemon for the purpose of a street, road, or path.
- (2) That there is no authority in the said Act for the allowance of a deduction in respect of expenditure for fences.

James Rearden and the Solicitor-General, for the Commissioners, argued that the money spent by the corporation on the road was not an expenditure by Mr. Lemon. The phrase “incurred expenditure” in Section 16 (2) (b) showed that actual expenditure of money is meant.

T. W. Brown, for Mr. Lemon, said that if Mr. Lemon had refused to dedicate the 10-foot strip the corporation would have had to purchase it. The bargain really was a purchase by Mr. Lemon of the expenditure made by the corporation.

The judgment of the Court was delivered by Palles, L.C.B.: We have carefully considered this case. It involves an interesting point, but we think Mr. Brown's contention is correct, although, of course, Mr. Lemon cannot get an allowance twice in respect of the same plot of ground. We

do not think that the Finance (1909-10) Act, 1910, interferes with the power of a landowner to make a bargain in respect of the "site value." We will put upon the face of our order that Mr. Lemon is entitled to an allowance in respect of the bargain with the corporation by which he purchased the labour of the corporation, but that allowance is in respect of the site value of the 10-feet strip of road dedicated by Mr. Lemon to the public. We dismiss the appeal with costs. The order entitled Mr. Lemon to a sum of £100 in respect of the expenditure in question.

For the appellants : The Solicitor-General and J. Rearden, instructed by the Solicitor for the Inland Revenue.

For the respondent : T. W. Brown, instructed by John Graham.

[VALUATION APPEAL COURT, SCOTLAND.]

TRUSTEES OF THE CONGREGATION OF JEWS. GLASGOW, v. INLAND REVENUE.

[JULY 10TH, 1915.]

Increment Value Duty—Sale—Site Value on Occasion—Method of Ascertainment—Remit to Referee to reconsider his Decision in the light of Lumsden's and Walker's Cases—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 2 & 25.

A property, purchased by the appellants in 1908 for £1,200, was sold by them in 1911 for £1,500. Before April 30, 1909, they had expended £305 in improvements. They did not contest the provisional valuation which fixed original total value at £1,200, and original assessable site value at £605. On the occasion of the sale the Commissioners claimed that the site value was £905, showing an increment value of £300, and this was confirmed by the Referee. On appeal to the Valuation Appeal Court, the Court, taking into consideration that the Referee had issued his award before the judgments of the House of Lords in *Lumsden v. Inland Revenue* [1914], A. C., 877, and *Inland Revenue v. Walker* [1915], A. C., 509; 1915, S. C. (H.L.), 1, remitted to him to reconsider his award in the light of these judgments. The Referee having reported that on reconsideration he found the site value on the occasion to be £600, the Court recalled the Referee's first decision and affirmed his second decision.

The property forming the subject of the appeal is known as No. 403, Cumberland Street and No. 304, Mathieson Street, Glasgow, and was

occupied at April 30, 1909, as a Jewish synagogue. It was purchased by the appellants on September 5, 1908, at the price of £1,200. In 1909, before April 30, the appellants effected improvements on the buildings at a cost of £305. On August 8, 1911, they sold the property to James Campbell and John Farmer for £1,500, and since that date it had been used as a picture-house. The provisional valuation was served on July 25, 1912, and, not being objected to, became final. The total value was stated at £1,200, and the assessable site value at £605. The Commissioners subsequently claimed that the site value on the occasion of the sale was £905. This sum was arrived at by deducting from the consideration for the sale, viz., £1,500, the same sum as was deducted from total value in the provisional valuation, viz., £595. The appellants were accordingly assessed to increment value duty on £300 (£905 - £605).

The appellants appealed, and the Referee, to whom the case was remitted, issued an award on June 2, 1914, in the following terms:—

“ Having inspected the site and building, and having regard to the particulars of the grounds of appeal as presented to me at the hearing, and to the admitted fact that the provisional valuation was not objected to within the time allowed under the Finance (1909-10) Act, 1910, I decide the provisional valuation holds good, and the appellants liable for the increment duty on the sale of the subject.”

The appellants appealed against this decision to the Valuation Appeal Court, and the Court on March 20, 1915, remitted to the Referee to reconsider his award in view of the House of Lords' decisions in *Lumsden's* and *Walker's* cases, which had been issued since his award, and to amend his award if so advised.

On July 2, 1915, the Referee reported to the Court as follows:—

“ Having reconsidered the matter . . ., I am of opinion the assessable site value . . . on the occasion of sale (viz., August 8, 1911) was £600, and that as the original assessable site value is £605, there is therefore no increment value on the occasion in question.”

“ *Note.*—I desire to explain that I wholly misapprehended the question with which I had to deal, and at the same time was misled by the manner in which the question was submitted to me by the parties. According to the best opinion which I am able to form, I consider that in the original valuation too little was attributed to the value added by buildings. But, as the original assessable site value was finally fixed, in consequence of no appeal being taken, at £605, I take that figure as the one with which to compare the assessable site value on the occasion of sale, viz., August 8, 1911.

“ To ascertain this latter value, as directed by the statute, I find—

- “ (1) The gross value at August 8, 1911, to be £2,065, as I regard the actual consideration on sale when the capitalised value of the feu-duty is added as, in my opinion, meeting the requirements of the Act, Section 25 (1).

- “(2) The difference between the said gross value and what, in my
 “ opinion, was the full site value at August 8, 1911, to be £900,
 “ and deducting this difference (£900) from the consideration on
 “ sale (£1,500),
- “(3) I find the assessable site value at August 8, 1911, to be £600,
 “ and as this is less than the original assessable site value there
 “ is no increment value on this occasion.”

On July 10, 1915, the Court, having considered the Referee's report, recalled his original decision, dated June 2, 1914, and affirmed his decision, dated July 2, 1915, and found no expenses due to or by either party in the Court or before the Referee.

Lord Johnston : In this appeal of the Trustees of the Congregation of Jews in Glasgow against Mr. Watherston's determination, as Referee, of June 2, 1914, after hearing parties on the case stated by Mr. Watherston, we, on March 20, 1915, recalled *in hoc statu* the decision of the Referee, and remitted to him to reconsider and to amend the same, if so advised. We did so because Mr. Watherston had dealt with the case and given his determination thereon prior to the hearing by the House of Lords of the recent case of *Lumsden* ([1914], A.C., 877). There was reason to think that Mr. Watherston, and he was not singular in this, had misapprehended the meaning and intention of the Act, at least as now authoritatively interpreted by the House of Lords, notwithstanding the equal division of opinion in the House, by their judgment in that case. In sending the case back to Mr. Watherston we carefully explained to him the effect, as we understood it, of the House of Lords' judgment in *Lumsden's* case, and the course which, in accordance with that judgment, it behoved him to follow.

Mr. Watherston has now reported, and in doing so has stated that, as we anticipated, he had, in point of fact, misapprehended the question with which he had had to deal, and at the same time had been misled by the manner in which it had been submitted to him by the parties. The result of his reconsideration, in the light of our explanations and instructions to him of March 20 last, is that he now finds that the assessable site value, on the occasion of sale, viz., August 8, 1911, was £600, and that as the original assessable site value was £605, there was therefore no increment value on the occasion. In a note to his determination he explains the process by which he reaches that conclusion.

To Mr. Watherston's procedure and conclusion on such reconsideration there has been, and I am satisfied can be, stated no objection, and we shall accordingly pronounce an interlocutor approving his determination. But we think that, though the appellants are thus successful in their appeal in consequence of their conduct of their case they are not entitled to any expenses.

The Crown have chosen to enter a *caveat* against our procedure being accepted as a precedent, in respect that the case is a very exceptional one, and that the result of our remitting to Mr. Watherston has been that the appeal has been sustained on totally different grounds from those on which it was originally taken to Mr. Watherston as Referee.

The course taken by the Court in this case has certainly been exceptional, and the reasons for taking it have been so fully explained in our previous judgment in the presence of the Crown, that I do not think it necessary to advert to them further. The precise circumstances are not likely to recur again. But I am not prepared to say that the Court will hold itself in any way tied by the precise form and grounds of appeal taken against a provisional valuation to a Referee, and that it will not, where it thinks that necessary, remit to the Referee to reconsider the case anew, with explanations or instructions. The course would still be exceptional, but we are in no way debarred from taking it, where, as here, it is necessary to enable the Court to perform its function under the Act.

Lord Salvesen and Lord Cullen concurred.—([1915], S. C., 997.)

[VALUATION APPEAL COURT, SCOTLAND.]

INLAND REVENUE v. MILLER AND OTHERS.

[FEBRUARY 6TH, 1916.]

Increment Value Duty—Exemption—Stamp Duty—Ground purchased by Local Authority—Conveyance exempt from Stamp Duty—Public Health (Scotland) Act, 1897 (60 & 61 Vict., c. 38), s. 168—Glasgow Corporation (Police) Order Confirmation Act, 1901 (1 Edw. VII., c. 163), s. 18—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8), ss. 3 (6), 4 (4), & 10 (2).

The Finance (1909-10) Act, 1910, Section 3 (6) enacts: "Increment value duty shall be a stamp duty collected and recovered in accordance with the provisions of this Act."

Section 4 (4) enacts: "Any duty assessed by the Commissioners under this section shall be a debt due to the Crown from the transferor or lessor."

The Public Health (Scotland) Act, 1897, Section 168, enacts: "All . . . conveyances . . . in favour of the local authority under this Act shall be exempt from all stamp duties."

Held, that increment value duty was a debt due to the Crown, and not a stamp duty on an instrument; and therefore a person who had sold and conveyed land to a local authority under the Public Health (Scotland) Act, 1897, was not exempt from increment value duty.

Decision of the Referee (*ante*, p. 285) reversed.

The arguments are fully stated in the previous report.

Lord Johnston: The Corporation of the City of Glasgow has recently

acquired from John Miller, and others, certain subjects in School Wynd, Glasgow, by disposition dated in January, 1913. These subjects were acquired by the corporation, acting under the Glasgow Police Acts, 1866 to 1912, and the subjects were acquired for the purpose of being converted into an open space or playground for children. The question that is raised here is as to the incidence of increment value duty upon the transaction. It is accepted that, if increment value duty is due, the amount is £303. John Miller and others, base their claim for exemption from increment value duty upon the statutory powers, including the statutory relief from stamp duties, of the Commissioners.

By the Glasgow Police Order of 1901 (duly confirmed by Parliament) it is provided (Section 18) that the corporation, acting as the local authority under the Public Health (Scotland) Act, 1897, "may provide by purchase, lease, or otherwise maintain, lay out, and improve ground or premises for public recreation . . . and the powers of borrowing money and levying assessments in that Act contained shall be applicable to the purposes of this section." Turning to the Public Health Act of 1897, it is found that the corporation are indeed the local authority under the Public Health Acts, but I do not find that the local authority under the Public Health Acts had any power to acquire lands for the purpose of recreation. The Provisional Order Act of 1901 is therefore an extension of the corporation's powers as local authority under the Public Health Act. And in order to enable them to effect such acquisition, they require, and I think were intended to have, more than the public health local authority's powers of borrowing money and levying assessments. With the extended power to provide, &c., ground for public recreation, I think it is a necessary implication that they were to have the same powers for acquiring land as were conferred on the public health local authority by the Act of 1897, for acquiring lands for sundry purposes named in that Act. These powers are to be found in the Public Health Act, 1897, Sections 144 and 145. By Section 144 the local authority is empowered to acquire lands "by agreement or otherwise." But by Section 145 "otherwise" is interpreted. Shortly, a code is enacted whereby the local authority may obtain through the Local Government Board an Order empowering them to put in force the compulsory powers of the Lands Clauses Acts. Whether they acquire by agreement or compulsorily, the transaction necessarily involves a conveyance. In the present case they have acquired by agreement, and they have obtained a disposition from John Miller and others conveying to them the subjects acquired. Now the Public Health Act, Section 168, provides that "all bonds, assignments, conveyances, instruments, agreements, receipts, or other writings made or granted by or to or in favour of the local authority under this Act shall be exempt from all stamp duties." This enactment is undoubtedly intended as an encouragement to the public health authority to exercise these powers, as it cheapens to them any transaction requiring a writ or instrument of the class enumerated. The first question is, Does it cover transactions which are not directly under the Public Health Act but only indirectly under the combination of the Provisional Order Act of 1901 and the Public Health Act? This question I answer in the affirmative. But

the more important question is whether this relief enures in any way to the sellers of subjects to the corporation, and who, as sellers, and not the corporation as purchasers, are liable in the particular duty in question. At first sight it does not seem a natural conclusion from the terms of the statutory relief. Where the corporation acquire lands and obtain a conveyance according to the ordinary law and practice it is the corporation as disponees, who are liable in the stamp duties on the transaction, which are the usual *ad valorem* duties on conveyances. The terms of the statutory relief do not indicate the intention of doing more than exempting the necessary instrument or conveyance from stamp duties, and it would need some very cogent reasons to induce me to think that the provision in question intended relief, not merely to the corporation, but to those who sold to the corporation, from any such duties as increment value duties, which have no relation to the instrument or conveyance. But the appellants found upon the expression "exempt from all stamp duties," and point out that increment value duty is a stamp duty. This is true in words, although I do not think that it is true in the sense in which the term "stamp duties" is used in the Public Health Act, Section 168.

Increment value duty is imposed by Section 1 of the Finance (1909-10) Act, 1910. and is to be collected in accordance with the provisions of that Act. And Section 3 (6) declares that "increment value duty shall be a "stamp duty collected and recovered in accordance with the provisions of "this Act." When the provisions of this Act are carefully examined it is found that the duty is certainly not to be collected in the ordinary sense of a stamp duty, that is, by the means of stamps.

In the case of a transfer on sale, it is (Section 4 (1)) to be assessed by the Commissioners and paid by the transferor. It is the duty of the transferor (Section 4 (2)) to present to the Commissioners the instrument of transfer or reasonable particulars thereof for the purpose of assessment.

Further, the instrument is not (Section 4 (3)) to be receivable in evidence (see the Stamp Act, 1891, Section 14) unless it has been stamped with the denoting stamp; that is, a stamp denoting either (a) that the duty has been assessed and paid, or (b) that particulars have been delivered, and caution, if required, found for the duty, or (c) that no duty is due. But there follows a most important provision (Section 4 (4)), viz., that any duty assessed by the Commissioners shall be a debt due to the Crown from the transferor. That is not the case with duties properly collected by stamps. The collection of these is enforced by penalties and by rendering the instrument of no practical avail until it is stamped. There are, however, a great many cases in which duties are termed stamp duties which are in the same position as those in question. For instance, by the Succession Duty Act of 1853, Section 9, succession duties "shall be considered as stamp duties, and shall be under the care and management "of the Commissioners of Inland Revenue." It is very difficult—in fact, the learned Solicitor-General admitted that he had failed—to find any intelligible reason for their being called stamp duties when they are not collected by means of stamps, either embossed or adhesive. The most probable explanation seems to me to be that the use of the term has refer-

ence to some former revenue arrangement for collecting duties, when, if I am not mistaken, there was a separate Board of Commissioners of Stamps. Some light, I think, is got from the comparison of the Stamp Duties Management Act, 1891, and the Stamp Act of the same year. The first of these Acts (Section 1) speaks of "duties for the time being chargeable by "law as stamp duties," and places them under the care and management of the Commissioners of Inland Revenue, whereas the second of these Acts is confined to stamp duties, properly so called, upon instruments. There is another indication which must not be omitted. Under the Finance Act of 1910, where increment duty falls to be collected on the occasion of a death, the provisions for the collection of estate duty, under the Finance Act of 1894, are to apply as if increment duty were estate duty. If the Finance Act of 1894 (Section 6) is examined, it is seen that though estate duty is equally called a stamp duty it is to be collected on an account as other death duties, and can be recovered by the Crown.

Returning to the exempting or relieving clause of the Public Health Act, 1897, when it is seen how clearly the exempting provision has reference to the exemption of instruments from stamp duty, I think that it is impossible to include thereunder the exemption, not of the instrument but of the transaction, from increment value duty, which, though called a stamp duty, differs so materially from the stamp duties upon instruments. I conclude, therefore, that the *prima facie* view that Section 168 of the Public Health Act, 1897, was not intended to relieve anybody but the corporation, as public health authority, from the incidence of stamp duty upon instruments is a sound conclusion, and that therefore the decision of the Referee was erroneous.

Lord Salvesen and Lord Cullen concurred.—([1915], S. C., 469; 52 S. L. R., 423.)

[VALUATION APPEAL COURT, SCOTLAND.]

INLAND REVENUE *v.* SCOTTISH NEWSPAPER PUBLISHING COMPANY, LIMITED.

[FEBRUARY 19TH, 1916.]

Increment Value Duty—Transfer on Sale—Consideration—Total Value—Deductions from Total Value to arrive at Assessable Site Value—Expenditure of a Capital Nature for the purpose of any Business—Matter Personal to the Owner—Finance (1909-10) Act. 1910 (10 Edw. VII., c. 8), ss. 2 (2) (a), and 25 (1) (3) & (4) (a) (b) & (d).

A building with a piece of background, forming 19, St. James' Square, Edinburgh, was occupied by Messrs. Macfarlane & Erskine, printers, until the end of 1907. Repeated efforts were made to sell the property. Twice in March, 1908, and in February, 1909, it was exposed to public auction,

latterly at the upset price of £1,200, but without eliciting a bid. In December, 1911, the respondents made an offer of £650; but, after some further negotiations, they increased it to £725, at which figure the property was sold to them. The bargain was concluded on January 11, 1912. Within nine days thereafter H.M. Board of Works opened negotiations for the purchase of the property, and on February 6 they purchased it for £2,100. The provisional valuation, as at April 30, 1909, had fixed the gross value at £1,138, total value £1,050, full site value £370, "difference" value £768, assessable site value £282. The Commissioners claimed that the assessable site value, on the occasion of the sale by the respondents, was £1,332, and a notice of assessment to increment value duty was served on June 13, 1913.

The respondents appealed, and the Referee (Mr. John Watherston, F.S.I.), to whom the appeal was remitted, issued an award on January 9, 1914, fixing the site value on the occasion at £775. The Commissioners of Inland Revenue appealed to the Valuation Appeal Court.

On October 26, 1915, the Court remitted the case back to the Referee to take evidence of the circumstances surrounding the transaction out of which the question to him had arisen, and to report to the Court his determination of the site value on the following hypotheses: (1) Without reference to the fact that the Board of Works were in the field desirous of acquiring the property; (2) taking into consideration that the Board of Works were potential buyers; (3) that the appellants were only willing sellers at a price calculated on the value of the property to them; and (4) that the price received by the sellers included compensation for disturbance.

Evidence was led before the Referee on December 20, 1915, and on January 10, 1916, he reported to the Court as follows:—

" Case I.—Gross value £1,238, total value £1,150, ' difference ' value
" £868, full site value £370, assessable site value £282.

" Case II.—Gross value £1,438, total value £1,350, difference value
" £868, full site value £570.

" Case III.—Gross value £2,188, total value £2,100, difference value
" £868, full site value £1,320. The calculations for increment
" value would then be—

| | £ | £ |
|--|-----|-------|
| " Consideration on sale | | 2,100 |
| " (a) ' Difference ' value | 868 | |
| " (b) Expenditure for plans, &c. | 60 | |
| " (c) Matters personal to the owner or other " person interested for the time being " in the land | 525 | 1,453 |
| " Site value on occasion | | 647 |

" I consider this the correct method of dealing with the transaction . . .

" Case IV.—I consider that my findings under Case III. would allow
" sufficient compensation to the company for disturbance in their
" ownership of the buildings as apart from site

“ My determination of the site value of the land on the occasion of the “ transfer on sale is that the amount is £647 sterling.”

The Court *found* that the assessable site value on the occasion was £1,232.

Lord Salvesen (after narrating the facts) : Assuming that there are no deductions to be made, the calculation for ascertaining the site value on the occasion is a simple one. It is reached by subtracting the difference value from the consideration on sale. This brings out the assessable site value of £1,232 on the occasion ; and, deducting the original assessable site value of £282, the increment of site value amounts to £950, on which the duty of 20 per cent. is now claimed.

But for the decision of the House of Lords in the case of *Lumsden* it would have seemed difficult to hold that a duty which was intended to be imposed on increment of site value only should be leviable when it is found as a fact that there has been no increase in site value, and that the difference between the price obtained and the original total value must, therefore, have arisen from other causes. So far as we are concerned, however, it has now been conclusively settled that the increment value duty imposed by the Finance Act, 1910, is wholly independent of any increased value in the site ; and what are called “ windfalls ” by the Lord Chancellor will be taxed “ whatever they may be due to—site, “ buildings, or anything else.” I do not profess myself able wholly to understand the opinions delivered by Lord Haldane (Lord Chancellor) and Lord Shaw, to which alone it is legitimate to look for guidance : but on the matters which are essential here they have been interpreted by the House of Lords in the subsequent case of *Walker* ([1915] A.C., 509 : 1915, S. C. (H.L.), 1), and that interpretation is binding upon us. Lord Parker of Waddington thus interprets the effect of the decision in *Lumsden's* case. He says : “ It converts the increment value duty imposed by the “ Act into a duty which is wholly independent of any increment value “ at all, and it enables the Crown on any sale of land to exact as increment value duty one-fifth of the sum by which the actual consideration “ given by the purchaser may, in the opinion of the valuing authority, “ have been too large—even though the original or assessable site value “ may have remained the same or have actually decreased.”

The statute, however, allows certain deductions from total value in order to ascertain the assessable site value. With the first of these deductions, which consists of what the Referee calls “ difference value,” I have already dealt. The other deductions under heads (b) and (c) of Section 25 (4) are not directly involved in this case. They require, however, to be examined in order to ascertain their character and with a view to considering whether they afford any aid in the interpretation of the deductions here claimed. Clause (b) deals with any part of the total value which is proved to be directly attributable to work executed or expenditure of a capital nature (including any expense of advertisements) incurred *bona fide* on behalf of any persons interested in the land for improving the value of the land, or for the purpose of any business, trade, or industry other than agriculture. A concrete illustration would be where the owner

had added a wing to any building which had been made the subject of an original valuation and by which the value of the subjects had been enhanced. The whole amount of the expenditure would not necessarily fall to be deducted from the total value, for that might well be in excess of the amount by which the Referee considered that the value had been enhanced by the expenditure. This, I think, is plain from the opening words of the clause, by which the deduction is limited to any part of the total value which results from the expenditure mentioned. If it were otherwise the clause would presumably have been expressed so as to cover all expenditure of a capital nature. The same applies to Clause (c), which contemplates the case of the appropriation of any land for the purpose of streets or open spaces for the use of the public. Such appropriation must enhance the value of the subjects which has already been entered in what is popularly called the "Domesday Book." Thus in any case where, after a street has been built, an open space in front of it is dedicated in perpetuity for the use of the public, the amenity which is thus insured to the houses already built will go to enhance their value in the open market, and will so enter the Referee's estimate of total value. To the extent that this added amenity has enhanced the value of the subjects it forms a deduction from the value in reaching the assessable site value. And here, again, there appears to be no difficulty in following out the direction of the statute. Clause (d), however, deals in part with a different class of deductions. It is thus expressed [his Lordship quoted the clause].

The first part of the clause appears to me to occasion no difficulty. If in the present case the feu-duty had been redeemed, the gross value and the total value would have been the same figure; but the effect of the redemption would have been to increase the total value by the amount of the capitalised feu-duty. This increase of the value being attributable to the redemption of a fixed charge would require to be deducted from the total value, otherwise the owner would be liable to be taxed on an increment of value which was due to his own expenditure. When one comes, however, to the concluding words of the clause (and it is upon these that the deductions are claimed), one finds a difficulty in figuring any concrete case in which personal goodwill or any other matter which is personal to the owner or occupier of the land can possibly enter as an element in estimating the total value of the land. It is a quite intelligible proposition that the consideration paid by the purchaser may include a sum for goodwill or other personal element which he acquires along with the land; but I fail to see how it can form part of the value of the land, as that has to be ascertained in terms of Section 25 (1). *Ex hypothesi* the land has to be valued as if no sale has taken place, and the principle of valuation is to be the amount "which the fee simple of the land, if sold at the time in "the open market by a willing seller in its then condition . . . might "be expected to realise." Such a principle appears to me to exclude anything of the nature of a personal element, for that is a thing which may or may not be conveyed along with the land. The owner of the land may at the same time be the occupier and be carrying on a lucrative business in the premises conveyed. So far as the goodwill of that business depends upon the site it is heritable and forms part of the value of the

land in the open market. Thus a shop in a central thoroughfare will have a much higher value than a similar shop in a side street. But obviously this is a value which attaches to the land as such, and has nothing to do with the person who happens to be in occupation at the time when the ownership is changed by sale. The owner of such a property, however, may convey the personal goodwill which arises from the reputation which he has established for the goods sold at the premises in question, and which (especially when conveyed along with the name under which the business has been carried on) may constitute an element of value greater than the actual value of the subjects in the open market.

The Act seems to contemplate such items of value as forming a legitimate deduction for the purpose of ascertaining increment value duty. But on the construction adopted in *Lumsden's* case I am unable to see (and counsel for the appellants could offer no assistance) how this construction can ever receive effect. This difficulty was very forcibly pointed out by Lord Moulton in his dissenting judgment in *Lumsden's* case, and I cannot find a solution to his and my own difficulties in either of the two opinions by which the interpretation of the Act has been finally fixed.

These opinions, however, as I think, lead to the necessary result, as expressed by Lord Parmoor in *Walker's* case, that Section 25 (4) (d) "only allows such a deduction if the amount claimed to be deducted is included as part of the total value;" and the same view appears to me to be adopted by Lord Parker of Waddington where he says that in order to justify the respondent in making the deduction claimed in respect of goodwill it lay upon her to prove that "some part of the total value of the land, as estimated by the Referee . . . is directly attributable to one or other of the matters referred to in Clause (d)." In the present case, as in *Walker's*, none of the deductions claimed are included in the total value of £1,150 as estimated by the Referee. This appears from the Referee's own figures and from the fact that, in order to give effect to the deduction which the respondents claim, he has, I think, contrary to the decision in *Lumsden's* case, proceeded to fix the total value, not on the basis of the value in the open market but upon the price paid.

What I have said appears to me to be sufficient for the decision of this case according to the interpretation of the Act that we are now bound to follow. That interpretation has the merit of simplifying the Act by reading out of it altogether, so far as I can see, the last three lines of Section 25 (4) (d), although it affords no explanation as to how these words came to be inserted.

Even if I were free to take the Referee's method of starting with the consideration on sale as the essential figure by reference to which the various deductions fall to be ascertained, I should still differ from him in holding that any deductions have been proved which are of the nature of "goodwill or any other matter which is personal to the owner, occupier, or other person interested for the time being in the land." The two items which he allows are: (1) Expense of plans and Dean of Guild Court petition, £60 (I may mention in passing that in the proof the figure is nowhere higher stated than £40); and (2) Allowance for matters personal to the owner, £525. As regards the first item, it was incurred before the

sale was completed, and with the view of enabling the respondents to consider whether the subjects would be suitable for their purpose and the amount of expenditure which they would have to incur to use them to the best advantage. I cannot see how this can form part of the value of the subjects, whether the total value is to be arrived at by estimate or is to be taken as the sale price. The Referee treats it as a deduction falling under (b) as expenditure of a capital nature incurred *bona fide* for the purpose of a business. It may be so described; but it is only where such expenditure contributes to the total value of the land that it forms a permissible deduction. In this case it appears to me that no part of the total value was attributable to such expenditure. I rather take it that there is a further limitation, namely, that the expenditure must be made by or on behalf of the person who is interested in the land, and the respondents here were not interested in the lands in question at the time when they made it.

With regard to the other deduction claimed, viz., £525, it may be, as the Referee says, that it is "a fair sum to allow to the company, in addition "to what may be called the market value of the buildings as buildings, in "order to compensate them for being deprived of the buildings"; but I fail to see the relevancy of the remark. The special use to which the owner of a property proposes to put it or the value which it has to him does not necessarily affect its value to the purchaser. What the Act seems to contemplate is an element of value which is transmitted by the owner to the purchaser, and not merely a reason which makes the owner reluctant to part with his property unless at a tempting price. Thus, if in this case the property had been acquired by a property speculator who had declined to sell at a less price than that which the respondents received, according to the Referee's view no deduction would fall to be made under subsection (d), for there was nothing personal to the owner except his fixed resolve not to part with the property unless he got a ransom price. But the buyers would obtain exactly the same subject whether they bought from the one owner or the other; and the value of the property in the open market estimated under Section 25 (1) could be no higher in the one case than in the other. In truth it was not any consideration personal to the seller which enhanced the purchase price, but the anxiety of the purchaser to acquire this particular site. Perhaps he might have made an easier bargain with a less unwilling seller, but even that does not follow. In allowing this deduction the Referee has, in my opinion, violated two of the conditions under which total value has to be ascertained. In the first place he has taken the actual price as the starting point of the calculation because the respondents were unwilling sellers, whereas his duty was to estimate the value on the footing that they were willing sellers; and secondly, he has, for the purpose of the deduction, treated the actual price paid as if it were equivalent to the value in the open market, which he has himself fixed as little more than half the figure.

I need scarcely say that I do not regard my view as in the least conflicting with the decisions in the case of *Glass* (to which I was a party) and the case of *Buchanan*, decided by the Court of King's Bench. The

former case was that of a provisional valuation where the Referee had left out of account an important element of value, namely, that the land formed part of a drainage area which it was known that the Water Commissioners would sooner or later have to acquire in order to preserve the purity of the water supply. The land itself had thus a special value for a particular purpose which was known and would have brought speculators into the field the moment it was exposed for sale. The circumstances were similar in the English case. The lands sold adjoined an institution which was known to require land for extension, and could only do so in the direction of the seller's property. Both subjects fell to be dealt with in the same way as land, which in the vicinity of a rapidly increasing town may have a prospective feuing value, although until actually sold for feuing it continues to be occupied for agricultural purposes. The use to which the seller proposes to put the land does not enter into the question at all. He will no doubt in every case endeavour to make the most of what he believes to be the buyer's necessity and exact the highest price; but how the profit so made can be attributed to goodwill or any other matter personal to the owner passes my comprehension. If windfalls are to be taxed, as the Lord Chancellor stated they must be, this appears to me to be a typical case of the windfall. Within a few weeks the respondents realised a price for an old property nearly three times as great as what they had contracted to pay for it, without ever having occupied it or expended a penny upon it. It appears, too, that in this case, whatever may be said of others, this profit was due entirely to site, the increment value arising from the requirements of the community. For these reasons I am of opinion that the appellants are right and that the increment value duty falls to be levied on the sum of £950.

Lord Cullen (after narrating the facts): The respondents say that while they paid only £725 for this property, which for about four years previously had attracted no offerer, the property, from the point of view of their special requirements, was a great catch at £725, and that its true value to them for retention and use in their business was about the sum, £2,100, paid to them on the resale to the Board of Works. They then go on to say that in the hypothetical open market sale by a willing seller as at the date of the occasion, which forms the basis for estimating gross value, &c., they, the owners, are to be figured as legitimate competitors with outsiders and as ready to pay £2,100, or thereby, in order to retain the property for themselves rather than sell it to any outsider for less. I am unable to admit this view. The selling value of a property is what the owner can get from someone else. He cannot sell to himself.

The respondents claim that they are entitled to a further deduction under the last part of head (d) of Section 25 (4) in respect of matters personal to them as the owners. They say that of the price of £2,100 a large part, if not the whole, of the excess of this price over the total value of £1,150 has been proved to be attributable to such matters personal to them. What these alleged matters personal consist of, according to the respondents' view, has been already fully stated by Lord Salvesen.

The first answer made by the Crown to this claim is that, according to

the defining words used in Section 25 (4) (d), a deduction allowable there under must consist of some part of total value, whereas, *ex hypothesi*, the deduction here claimed by the respondents forms no part of the total value on the occasion. The reply made by the respondents is as follows: They say (1) that the defining words "any part of the total value" used under head (d), as also under heads (b) and (c), are appropriate to the original process of arriving at assessable site value as at April 30, 1909, where total value is what the deductions fall to be subtracted from; (2) that under Section 2, when site value on the occasion of a transfer by way of sale has to be fixed, the consideration becomes the amount from which the deductions fall to be taken; and (3) that it therefore follows, by way of analogy, that the defining words, "any part of the total value," are, on the occasion, to be replaced by the words "any part of the consideration." This seems to me to be a *non sequitur*. What Section 2 allows to be deducted on the occasion are "the like deductions," while the respondents' view seems to change the nature of the deductions as they are defined, and to let in a deduction on the occasion which is unlike any deduction allowable in fixing the original assessable site value.

The respondents urge this further view. They say that the matters personal to the owner under Section 25 (4) (d), if the word "personal" be taken as referring to items of the nature of personal estate, cannot, by their nature, be ingredients in total value, which is a value of the land, so that the deduction in respect of matters personal cannot have been intended to have any application in the original process of arriving at assessable site value, and must, therefore, have been intended specially and solely for application on the occasion, by way of dissecting any excess of a price paid over total value. Now I confess that in any view it is exceedingly difficult to know what are the kinds of matters intended to be covered by the words "any other matter which is personal to the owner, &c." But one thing is clear, that under the express terms of Section 25 (4) (d) such matters are conceived of as capable of forming part of the total value as at April 30, 1909, from which they are directed to be deducted in the original calculation for fixing assessable site value. And that being so, the point of the particular argument for the respondents under notice seems to fail.

The case of *Lumsden* ([1914], A. C., 877) decides that, in applying head (a) of Section 25 (4), the valuer is not to proceed by taking the price paid as necessarily proving the total value on the occasion and by building upon it a corresponding gross value, but that the gross value and full site value on the occasion are to be estimated in accordance with their definitions, which hinge on open market value as on a sale by a willing seller, a standard of value which a price paid may not reflect. The decision in *Lumsden* applied solely to a deduction claimed under head (a) of Section 25 (4), but there are observations by the noble and learned lords in accordance with whose opinions the decision went, which are favourable to the view that the price paid is not to be substituted for total value in applying, on an occasion, the defined deductions under heads (b), (c), and (d).

In the subsequent case of *Walker* (1915, S. C. (H.L.), 1) the question

here under consideration was not raised in the argument before this Court, both parties having proceeded on the assumption that a deduction under the last part of Section 25 (4) (*d*) might be allowable from the price although not forming any part of total value on the occasion. The point was, however, taken in the argument before the House of Lords, and Lord Parker of Waddington and Lord Parmoor, in the course of giving judgment, both expressed the view that, following the decision in *Lumsden*, a deduction under head (*d*) allowable on the occasion must consist of some part of the total value in accordance with the terms in which head (*d*), in common with heads (*b*) and (*c*), is expressed. These views were not necessary to the decision in *Walker's* case, but they are high authority, the force of which is not taken off by anything said by the other noble and learned lords who took part in the case.

For my own part I am prepared to follow the opinions so expressed by Lord Parker of Waddington and by Lord Parmoor. Putting aside conjectural views as to the intendment of the statute, and proceeding on ordinary principles of construction, I am unable, by necessary implication, to derive from its terms the result that, in applying the provisions of Section 2 and of Section 25 (4) on the occasion, the allowable deductions under heads (*b*), (*c*), and (*d*) of Section 25 (4) are not to follow the words in which they are there defined, equally as they must do in the original process of arriving at assessable site value from total value as at April 30, 1909.

Assuming, however, the contrary view, and that the respondents are right in saying that on the occasion the words "any part of the total value" fall to be exchanged for the words "any part of the consideration for the transfer," I am unable to conclude that what they propose to deduct is an allowable deduction under the last part of head (*d*). It is said to represent matters personal to them as the owners. It seems just as easy to say, in a similar sense, that it represents matters personal to the buyers. The respondents were desirous to keep the property because it suited their own special purposes, and was, in their view, worth to them for retention much more than either the price of £725 they had paid, or what they could get for it in open market. They were not willing sellers in open market, but were unwilling to sell unless they got an enhanced price covering the special advantages of the property for retention by them. On the other hand, the Board of Works was an urgent buyer for whom the subjects had a special attraction, which was different from the attraction they had for the respondents, inasmuch as what the Board was eager to acquire was the site only for the purpose of building Government offices thereon. And in order to acquire the site because of its special desirability for that purpose, the Board was prepared to pay, and did pay, for the subjects, which were not then for sale in open market, the price of £2,100, which, *ex hypothesi*, was largely in excess of open market value.

If the excess from the one point of view be called the equivalent of the respondents' personal unwillingness to sell, which the Board had to overcome, it may, from the other point of view, be called the equivalent of the Board's personal need to buy. The Board got nothing for its price but the heritable subjects. There was no transfer or surrender to them of any-

thing else to which any part of the price was attributable. Now I do not see my way to adopt the view that if an owner abstains from becoming a willing seller in open market but by *finess* in private bargain obtains from a particular offerer a *pretium affectionis* sufficient to overcome his disinclination to part with his property, the excess of the price paid over open market value is intended by the Act to be treated as representing a matter personal to the owner within the terms of Section 25 (4) (d).

On the whole matter I am of opinion that the claim of the Crown to increment value duty on the sum of £950 should be sustained.

Lord Johnston issued a lengthy dissenting judgment in which he held that several of the opinions expressed by the House of Lords Judges in *Lumsden's* and *Walker's* cases were mere *obiter dicta* and not necessary for the decisions, and that the judgments in these cases did not preclude him from considering the present case on its merits.—(1916, 1 S. L. T., 248.)

[VALUATION APPEAL COURT, SCOTLAND.]

TWEEDIE v. INLAND REVENUE.

[FEBRUARY 19TH, 1916.]

Increment Value Duty—Occasion for Collection—Sale under Compulsory Powers—Arbitration to fix Price—Addition of 10 per cent. made by Arbitrator in respect of Compulsory Sale—Consideration on Sale—Total Value—Deductions—Matter Personal to Owner—Finance (1909-10) Act, 1910 (10 Edw. VII., c. 8) ss. 1 (a), 2 (2) (a), & 25 (4) (d).

On May 2, 1913, the appellants, who were the owners of premises at 15, George Square, Edinburgh, received notice from the Edinburgh and East of Scotland College of Agriculture that they intended to take the premises under the compulsory powers contained in a Provisional Order incorporating the Lands Clauses Acts. Mr. James I. Davidson, F.S.I., was appointed arbitrator to determine the price to be paid, and on December 26, 1913, he issued an award fixing the price at £2,900. The parties agreed that this sum was arrived at by taking £2,640 as the value of the property and adding 10 per cent. for compulsory purchase. The Commissioners of Inland Revenue determined that the increment value was £260, and assessed to increment value duty on that basis. The appellants appealed on the grounds (1) that no occasion for the collection of increment value had arisen; (2) that the sum of £260 of alleged increment value represented an addition of 10 per cent. to the actual price for compensation for disturbance in respect of compulsory sale; (3) that the said sum of £260 was part of the total value attributable to matter personal to the owner in the sense of Section 25 (4) (d); and (4) that in any event the said sum should be divisible proportionally between the site and buildings.

On October 12, 1914, the Referee (Mr. John Watherston, F.S.I.) decided that the increment value was £260. The appellants appealed to the Valuation Appeal Court.

Argued for the appellants: (1) There was here no transfer on sale in pursuance of a contract, for the sale was compulsory. (*Heron v. Espie* [1856], 18 D., 917.) (2) In any event, the additional 10 per cent. was not part of the consideration for the lands but was compensation for disturbance. (*Inland Revenue Commissioners v. Walker*, 1913, S. C., 719; [1915], A. C., 509; *Inland Revenue Commissioners v. Glasgow and South Western Railway Company* [1887], 14 R. (H.L.), 33; *Glass v. Inland Revenue Commissioners*, 1915, S. C., 449.) If the additional 10 per cent. fell to be included at all, it should be divided proportionately between the site and the buildings.

Argued for the respondents: There was here a transfer on sale in pursuance of a contract, for the procedure under the Lands Clauses Acts imported an offer and acceptance. (*Forth and Clyde Junction Railway Company v. Ewing* (1864), 2 M., 684; *Lord Advocate v. Caledonian Railway Company*, 1908, S. C., 566.) The 10 per cent. must be part of the price of the land since the arbiter had no power to award money for anything else. (*Inland Revenue Commissioners v. Glasgow and South Western Railway Company*, *supra*, per Lord Watson at pp. 34, 35.)

Lord Johnston: The Misses Tweedie were proprietors of No. 15, George Square, Edinburgh. The Edinburgh and East of Scotland College of Agriculture, having obtained compulsory powers by a Provisional Order incorporating the Lands Clauses Acts, gave notice to take this property on May 2, 1913. A reference to determine the compensation to be paid was made to Mr. Davidson of Saughton Mains, who, on December 26, 1913, fixed the amount at £2,900, and a conveyance was executed by the Misses Tweedie on 3rd and recorded on 4th February, 1914.

The above sum of £2,900 was admittedly arrived at on the basis of a price of £2,640, with 10 per cent. or £260 added in respect of compulsory purchase. But neither in the arbiter's award nor in the disposition did any indication of this division of the slump sum appear. At this date no original valuation of the property had been made. But on May 11, 1914, a provisional original valuation was accepted and became final at the following figures:—

| | £ |
|---|--------|
| Original gross value | 2,763 |
| Original full site value | 1,234 |
| Difference between gross and full site value | 1,529 |
| Original gross value as above | 2,763 |
| Capitalised feu duty | 123 |
| Original total value | 2,640 |
| Difference, as above | 1,529 |
| Assessable site value | £1,111 |

The parties then proceeded to the adjustment of occasional site value.

The Inland Revenue valuator on November 2, 1914, issued his valuation as follows :—

| | |
|--|---------------|
| | £ |
| Consideration on sale | 2,900 |
| Deduct difference between gross and divested or full site value | 1,529 |
| Occasional site value | <u>£1,371</u> |

At the time this valuation was made the decision in *Lumsden's* case ([1914], A. C., 877) had only recently (July 20, 1914) been pronounced by the House of Lords, and *Walker's* case ([1915] A. C., 509) had not yet come before the House. I have considerable doubt whether this valuation on the occasion was properly proceeded with in view of these decisions. But this does not affect the only question which is raised in this appeal, viz., whether the late owners are not entitled to have a further deduction made under the Act of 1910, Section 25 (4) (d), from the consideration on sale, of the 10 per cent. or £260 given in respect of compulsory purchase, in the view that it was attributable to a matter personal to the owners. In a reference to him of this question, Mr. John Watherston, the Referee, has decided against the late owners, who have appealed to this Court.

They state these grounds of appeal :—

First, that a compulsory taking is not an occasion in the sense of the statute of 1910, in respect that it is not a transfer on sale “in pursuance of any contract” after the date of the commencement of the Act (Section 1 (a)). I do not think that this contention is sound. There have been a great many cases on the subject, and it is now accepted, I think, that the legal situation created by the taking of lands under compulsory powers is that the special Act is *substantially* an offer by the Legislature on behalf of the landowner of the lands scheduled to the company, and the notice to take an acceptance by the company, whereout there arises a contract from which neither party can resile, and that it is none the less a contract of sale that the price remains to be settled by arbitration, failing agreement. (*Forth and Clyde Junction Railway Company v. Ewing*, 2 M., 693.) And if an explanation of the expression “substantially” is desired, it will be found in *Heron v. Espie* (18 D., 917), and particularly in the opinion of Lord Justice-Clerk Hope.

Second, that the 10 per cent., or £260, allowed by the arbiter as compensation for disturbance on compulsory taking, does not form part of the consideration for the transfer of the land in the sense of Section 2 (2) (a) of the Act ; and

Third, that this sum is part of the total value, attributable to a matter personal to the owner in the sense of Section 25 (4) (d) of the Act.

These two points may be shortly disposed of together. I do not think that they really arise on the facts of the case. If they did, it would be necessary to apply the judgment pronounced in the case just decided—the *Inland Revenue v. The Scottish Newspaper Publishing Company*—on the question. What is the meaning of the term “total value” in Section 25 (4) (d) when applied to valuation on an occasion? Your Lordships have now held that it is an estimated total value and not the consideration on sale. The opposite is my opinion. But which view is right and which wrong on this point, does not matter for the decision of this case.

If I am wrong, the valuer must estimate total value on a footing which will leave no room for this item of deduction.

If I am right, it must be proved that part of the consideration on sale was attributable to a matter personal to the owner. And I think that the case is then ruled by that of *Walker*, for there is no better proof here than there was there. The fact is that the customary 10 per cent. for compulsory purchase in all cases is not justified by anything contained in the Lands Clauses Acts. What is provided for is compensation for rights and interests in the lands taken, and though 10 per cent. may be by custom, and not unjustly, added to the normal market price of the land, where the owner's right and interest are being taken and are being valued, to whomsoever these rights and interests belong, the slump sum is still the value of the land, and nothing but the land, unless it can be attributed to something other than the owner's proprietary right. I have said above, “not unjustly added,” because it is well known that the owner whose property is taken is put to expense and trouble in relation to the surrender of his property and reinvestment of the proceeds, for which normal market price does not recoup him, and that it is fair that, so to speak, contingencies should be thus covered. But the statute does not expressly allow for this being done as a matter of course, and if challenged, it could only be supported on the ground of interpretation by a now inveterate practice or of exceptional circumstances. If it could be shown that this sum of £260 was awarded to compensate the owners for having compulsorily to surrender the personal occupancy of the premises taken, it would then, in my opinion, differing from your Lordships, be an element of the personal, and not the real, interest of the owners in the sense of Section 25 (4) (d). But as there is no pretence that the owners had any such personal interest to adduce here, I see no ground on which we can sever this sum from the price of the property, and say, in answer to the second point, that it is not part of the consideration for the transfer of the land, or, in answer to the third point, treat it as a part of the consideration on sale attributable to something personal to the owners, of which Section 25 (4) (d) would authorise the deduction.

I am, therefore, of opinion that the appeal should be refused and the Referee's determination upheld.

Lord Salvesen (after reciting the circumstances) said. The appellants' first contention is that, the property in question having been compulsorily acquired, no occasion for the payment of increment value duty in the sense of Section 1 (a) of the Finance Act has arisen. That section provides for the duty being leviable “on the occasion of any

“transfer on sale of the fee simple of the land or of any interest in the land in pursuance of any contract made after the commencement of this Act.” The appellants say that there has been no sale of the land, or, at all events, no sale in pursuance of a contract. If they are right, the owner of land acquired under compulsory powers would be exempt from increment value duty, although it is probably to such cases that the principle of the Act is most plainly applicable, for the enhanced value is due, not to any act of the owner, but to the requirements of the community through its public departments (as in this case), or for the benefit of the community, as in a case where the lands are acquired for the construction of a railway or similar public undertaking.

I was at first impressed with the appellants' contention on the literal language of Section 1 (a), but I have come to be of opinion that the leading words of the clause are “transfer on sale,” and that the words “in pursuance of any contract made after the commencement of this Act” are merely intended to exclude transfers which have in fact been made after the Act, but in pursuance of contracts entered into before it. Now, I think there can be no doubt that there has been here a “transfer on sale” of the fee simple of the land. The disposition which the appellants themselves granted uses the word “sell,” although, of course, it discloses that the sale was made under compulsory powers. Whether the sale was made in pursuance of a contract in the ordinary meaning of the word “contract” is more open to question. In the case of *Heron* (18 D., 917), Lord President McNeill, speaking of a case where a railway company took lands under statutory powers without an agreement with the owner, but on the footing that compensation to him should be ascertained by arbitration, said that the owner's claim arose “not from a contract of sale nor from contract of any kind but *ex lege*,” and that “the Legislature accordingly deals with the claim of a party whose lands are thus taken or deteriorated without an agreement with him as being a claim, not for the price of lands due under a contract of sale, but as compensation awarded for the loss and detriment sustained by the owner.” On the other hand, it cannot be left out of account that in subsequent cases, as, for instance, that of the *Forth and Clyde Junction Railway Company* (2 M., 684), and the *Lord Advocate* (1908, S.C., 566), a different view has been taken, that view being thus expressed by Lord Cowan in the former case: “The special act is substantially an offer of the land by the landowner to the company, and notice by the company of their intention to take the land is acceptance of that offer,” and that, he says, makes a contract of sale (at p. 693); and Lord Johnston, who was Lord Ordinary in the later case cited, said: “According to the generally accepted doctrine, the Act which confers compulsory powers is the equivalent of an offer of the property, and the company's notice to treat is the acceptance; even when the consideration has to be fixed by arbitration, a purchase is completed past resiling on either side.”

In the First Division, as I read the opinions, the same view was taken on this matter, although a somewhat different result was arrived at. I think, therefore, in construing the Finance Act, 1910, we are bound to do so with reference to the state of the law that had been fixed as at its

date; and that a transfer of land under compulsory powers is a "transfer on sale"; and if the notice to acquire was sent after the date of the Act, that the sale takes place in "pursuance of a contract" within the meaning of Section 1 (a).

I have been greatly aided in reaching this result by Section 38, Sub-section (3), which is in these terms: "For the purposes of the Lands "Clauses Acts as incorporated with any special Act the amount, if any, payable by the transferor as increment value duty shall not be treated as part of the costs or expenses of a conveyance of land, and shall not be taken into account in assessing the compensation to be paid to the transferor." Now, I think that section plainly contemplates that the owner of lands taken under compulsory powers may be assessed for increment value duty, as it makes careful provision for his paying such duty and having no recourse against the statutory purchaser in respect of it. I have therefore come to be of opinion that the appellants' leading contention fails.

The appellants' next contention was that the sum of £260, being allowed as compensation for disturbance in respect of the compulsory purchase, did not form part of the consideration for the transfer of the land. The Referee has negatived this contention, and I agree with him. The purchasers acquired nothing but the land, and it was for the land that the full price of £2,900 was paid. The arbiter so states it in his award dated December 9, 1913. The case of *The Commissioners of Inland Revenue* (14 R. (H.L.), 33), although cited by the appellants, appears to me to be conclusive against them on this point.

The appellants' third contention was that the sum of £260 must be regarded as part of the total value attributable to a matter personal to the owners in the sense of Section 25 (4) (d) of the Finance Act, on the ground that it was really the price paid for the liberty of the owner to deal with his property as he chose. On this matter I refer to the opinion which I delivered in the case of *The Scottish Newspaper Publishing Company*, which explains my reasons for holding with the Referee that it does not form a deduction within the meaning of that section. This sum no doubt entered into the consideration, but not into the total value of the land which has to be ascertained by estimate.

Lastly, the appellants argued that the £260 should be treated as divisible proportionally between the site and the buildings to the effect of reducing the increment value to £111 2s. If this matter were open, there would be a great deal of force in the contention, but it appears to me to be foreclosed by the decision in *Lumsden's* case. I am therefore for affirming the decision of the Referee on all points.

Lord Cullen concurred.—([1916], 1 S. L. T., 267.)

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